(a) A company complies with the pay standard if the annual rate of pay-rate change over the life of each collective bargaining agreement negotiated during the program year is 7 percent or less.

(b) In addition, the annual pay-rate increase may be no greater than 8 percent in any year of a multi-year agreement.

(c) For purposes of determining whether the annual rate of pay-rate change complies with the pay standard, formulas for cost-of-living adjustments should be computed on the assumption of a 6-percent annual rate of inflation in the Consumer Price Index over the life of the contract.

Dated: December 21, 1978.

BARRY P. BOSWORTH,
Director, Council on Wage and Price Stability.

[FR Doc. 78-36046 Filed 12-27-78; 8:45 am]

federal register

THURSDAY, DECEMBER 28, 1978

PART VI

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

■

AIRPORT SECURITY

Revision of Regulations

[4910-13-M]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 16245]

PART 107—AIRPORT SECURITY

Revision of Part 107

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises those Federal Aviation Regulations which are designed to ensure the security of airports serving scheduled air carriers required to have screening programs. The experience of operators of those airports and the FAA has indicated that these regulations are in need of revision. In addition, it is necessary to add certain requirements, which Congress has directed the FAA to adopt. The amendment is intended to update and clarify airport security regulations, and to provide more effective protection of persons and property in air transportation or intrastate air transportation against acts of criminal violence and aircraft piracy.

EFFECTIVE DATE: March 29, 1979.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I General

Interested persons have been afforded an opportunity to participate in the making of this amendment by Notice of Proposed Rule Making No. 77-8 issued on June 10, 1977 (42 FR 30766; June 16, 1977). For the most part the proposals made in Notice 77-8 for amending Part 107, Airport Security, are adopted by this amendment.

This amendment changes Part 107 as follows:

1. Expands the security program content requirements.

2. Revises and makes more explicit the procedures for approval and amendment of a security program.

3. Adds procedures for notifying the FAA when changed security conditions require an amendment to a security program.

4. Revises and clarifies the requirement for law enforcement officers and adds standards for their training. (As will be noted, these standards are less burdensome than proposed, in that they provide for the use of either State or local standards.)

5. Adds procedures for requesting the use of Federal law enforcement officers.

6. Adds a prohibition against carrying a firearm, an explosive or an incendiary device, but, unlike the proposal, the prohibition is limited to sterile areas.

7. Adds a provision requiring the airport operator to make a record of certain law enforcement actions available to the FAA.

Due consideration has been given to all comments received in response to the Notice 77-8. Except as otherwise discussed in this amendment, the amendment and the reasons for it are identical to the proposal and the reasons set forth in the proposal.

Approximately 250 comments were received in response to Notice 77-8. Over half of the responses were from individuals, most of whom commented on § 107.21, relating to the carriage of weapons on airports. Comments were received from: airport operators and authorities; elements of municipal, county, and State governments; agencies of the Federal government; and outdoor sports associations and related businesses. A number of comments were received from domestic and foreign air carriers and organizations representing the aviation industry. Comments were also provided by police and security organizations.

A number of comments were received that were beyond the scope of the notice. These have not been addressed in this preamble.

A small number of commenters stated that many of the proposals in Notice 77-8 had no legal basis because the Federal Aviation Act of 1958 (Act) gives the FAA authority to issue regulations protecting persons and property against acts of criminal violence and aircraft piracy aboard aircraft only. However, in adding Section 315, Screening of Passengers, and Section 316, Air Transportation Security, (49 U.S.C. 1356 and 1357) to the Act (Pub. L. 93-366, section 202, 88 Stat. 409 (1974)), the Congress articulated the FAA's authority in this area by requiring the Administrator to provide persons traveling in air transportation and intrastate air transportation protection from acts of criminal violence and aircraft piracy. Therefore, the Administrator is authorized to prescribe regulations affecting activity on the airport, as well as aboard aircraft, when they are necessary to provide this protection.

II Specific Sections

Comments relating to specific sections and subsections of the amendment are set out below:

A. APPLICABILITY

A number of comments were received concerning the applicability of the part. A small number of commenters felt that section 107.1(a)(3), which would apply Part 107 to each person on an airport subject to the part, was unconstitutional or at least an unjustified extension of Section 316 of the Act, if it were to be used to bring civil action against persons found to be in possession of weapons or other prohibited articles. Some believe this rule would comply with the requirements of Section 316 if applied only to people in "sterile areas." These comments and others on proposed section 107.21, (Carriage of firearms, explosives, or incendiary devices) are discussed below.

B. AIR OPERATIONS AREA

Concerning the definition of Air Operations Area (AOA) contained in section 107.1(b)(2), one commenter stated that helicopter operations areas should be included in the definition and another wanted to include general aviation operations. Conversely, others would exclude from the definition general aviation areas and areas under the exclusive control of Part 121 and 129 air carriers.

The FAA considers it to be more efficient for security programs to be based upon the security needs of an entire, specifically-defined area, rather than individual elements within that area. Therefore, all operations occurring within an area "designed and used for the landing, taking off, and surface maneuvering of airplanes" (including helicopter and general aviation operations) are part of the AOA. Areas that are used exclusively by helicopters are not included in the definition of an AOA because they do not pose a sufficient threat to air carrier operations subject to section 121.538.

An air carrier may limit its responsibility within an AOA to an "exclusive area" under Part 107, as adopted, for which the carrier exercises exclusive security responsibility in accordance with a written agreement between it and the airport operator.

C. LAW ENFORCEMENT OFFICER

1. WARRANTLESS ARRESTS

Proposed section 107.3(b)(3) would have defined a law enforcement officer (LEO) as an individual who is, among other things, authorized to arrest for the violation, either in or out of the officer's presence, of any criminal law of the State and local jurisdictions in which the airport is lo-

cated. With regard to this part of the definition the Criminal Division of the Department of Justice pointed out that many police officers of State and local jurisdictions do not have authority, without a warrant, to arrest for misdemeanors not committed in their presence. The Department of Justice recommended striking the phrase "either in or out of his presence" from the definition so as to conform it to the arrest authority ordinarily possessed by law enforcement officers for misdemeanor offenses.

The FAA recognizes that arrest power is frequently limited as between misdemeanors and felonies, in that police officers often do not have authority, without a warrant, to arrest for misdemeanors committed outside their presence. Upon further consideration, the FAA has determined that it is not essential that officers have authority to arrest for misdemeanors committed outside their presence. Therefore, the LEO provisions, as adopted, require only that an LEO have authority to arrest with or without a warrant: (1) For a crime committed in the officer's presence, and (2) for a felony, when the officer has reason to believe that the suspect has committed it.

2. SCOPE OF AUTHORITY

Some commenters also believed that a limited authority to enforce only statutes relating to aviation security would be adequate for officers supporting security programs. A few were of the opinion that Federally-mandated "guards" had no reason to enforce State or local laws. Authority to arrest for violations of the criminal law of the State and local jurisdiction in which the airport is located is necessary to provide the level of law enforcement contempleted by Section 316 of the Act, "adequate to insure the safety of persons traveling in air transportation or intrastate air transportation from acts of criminal violence and aircraft piracy." It should be noted that locally deputized LEOs need not have the authority to arrest for Federal offenses. The majority of enabling State statutes and local ordinances provide authority to the deputized persons to arrest for both local and Federal offenses; however, a few States do not. In these instances the LEO's authority to arrest for local violations that are comparable to Federal violations has proven adequate under the current rule and is expected to be sufficient under this amendment.

3. PRIVATE LAW ENFORCEMENT PERSONNEL

Finally, a number of commenters also pointed out that many types of peace officers, cadets, trainees, and, particularly, private law enforcement personnel would be excluded from participation in security programs. On the contrary, this amendment does not preclude the use of any type of police officer, including a privately employed officer, if the officer has the arrest authority specified in section 107.17 and meets the other requirements of Part 107. Whether an individual employed by a private security force could perform the LEO function would depend on the existence of appropriate State statutes or local ordinances which confer the arrest power required by section 107.17. This authority is necessary to provide for immediate law enforcement action in situations in which the threat of criminal violence or aircraft piracy demand it.

In this amendment, all the requirements that must be met for a person to be used as an LEO, including those in proposed § 107.1(b)(3), have been placed in § 107.17. As adopted, § 107.1(b)(4) defines a law enforcement officer as "an individual who meets the requirements of § 107.17."

D. SECURITY PROGRAM GENERALLY

1. DEGREE OF SECURITY

Some commenters mistakenly believed that new § 107.3(a)(1) calls for absolute security when it requires that the airport operator adopt and carry out a security program that "provides for the safety of persons and property traveling in air transportation against acts of criminal violence and aircraft piracy." The rule does not require the airport operator to go to unreasonable extremes to meet all possible security threats.

2. REVISION OF SECURITY PROGRAMS

One commenter was concerned that the proposed revisions would require every existing security program to be rewritten. Although certain new requirements in Part 107, including training provisions, may call for an amendment to security programs, no other substantial revisions will be necessary if the program otherwise meets § 107.3(a)(1).

E. SECURITY PROGRAM CONTENTS

1. NECESSITY OF REQUIREMENTS

A number of commenters felt that the requirements in § 107.3(b), as to the content of the security program, would result in a vast increase in the amount of information required in the security program. They described these requirements as unnecessary, bureaucratic, and burdensome, particularly on smaller airports with limited staffs and resources.

Many of the requirements of new § 107.3(b) are already met in security programs which were submitted under the current § 107.3. The requirements added to new § 107.3(b) are necessary to ensure the effectiveness of each security program in accordance with Section 316. Since most of the requirements in new § 107.3(b) are contained in existing security programs, the increase in overall workload in administering the program will not be significantly increased. In addition, standards for complying with the new requirements are readily available, which will lessen any additional workload. As a result of these factors, the new program should not be burdensome.

2. DESCRIPTION OF THE AOA

Some commenters were convinced that listing the dimensions of the AOAs serves no purpose, particularly if the areas are graphically illustrated. Others objected to the listing of areas adjacent to the AOAs unless the areas were specified by type in the rule or determined solely by the airport operator, and were limited to areas which posed a genuine threat of hijacking.

It is necessary for the airport operator to describe the areas over which it proposes to maintain security so that the FAA can determine the adequacy of the security program and approve it. Specific dimensions are necessary in order for the AOA to be precisely described and a graphic description may not be sufficient for this purpose. In addition to these dimensions, it is necessary for the AOA to include pertinent features, such as terrain and barrier composition.

The only areas other than AOAs that need to be identified in security programs in accordance with § 107.3(b)(2) are those that clearly present a danger to persons and property in the AOAs.

3. DESCRIPTION OF FACILITIES, EQUIPMENT AND TRAINING

Several commenters objected to the requirement of including procedures and a description of facilities and equipment used to protect AOAs, as duplicating information contained in security programs required by Parts 121 and 129. Similarly, one commenter considered a description of LEO support and LEO training programs to be duplicative, unwarranted, and unnecessary.

A clear description of the procedures, equipment, and facilities intended to be used to secure the AOA is needed to evaluate the program for approval and determine the effectiveness of its implementation in accordance with § 107.13. For the same reason, a description of the law enforcement support and LEO training is also needed.

4. ALTERNATE EMERGENCY PROCEDURES

A number of commenters objected to requiring the description of alternate

emergency procedures, as too broad, too narrow, or not needed. Section 107.3(b)(6) does not require airport operators to develop alternate security procedures to be used during emergencies and other unusual conditions. These procedures must be included in the security program only if the airport operator has developed them. Section 107.3(b)(6), as adopted, clarifies this requirement. It should be noted that this section is intended to complement, not duplicate, the requirement in § 139.55 for an airport emergency plan.

5. IMPLEMENTING DOCUMENTS

Commenters also objected to the requirement that implementing documents be included in the security program. Proposed § 107.3(b)(8) does not require airport operators to include all implementing documents in their security programs. Rather, it allows them to avoid duplication by appending to the security program already existing documents which contain the information required by § 107.3(b), without having to restate the information elsewhere in the program. This provision has been deleted and a new paragraph (c) has been added to § 107.3 to make this clear.

F. SECURITY PROGRAM AVAILABILITY

With respect to the availability of the security program, as provided in proposed paragraphs (c) and (d) of § 107.3 (adopted as paragraphs (d) and (e)), one commenter would have the security program available to all air carriers served by the airport and another would have it available to all FAA personnel assigned to inspect the airport. One commenter stated that airport operators already restrict security program information, whereas another felt that the information should be made available to all airport users. A few believed that the provisions conflict with the Freedom of Information Act and the Executive Orders regarding security classifications.

Under paragraph (e) the airport security program is available only to those persons who have an operational need-to-know. The thrust of paragraphs (d) and (e) is to ensure that a copy of the security program is maintained and that it is made available to those inspectors who must monitor its implementation. The airport security program contains sensitive information of inestimable value to those who would commit offenses against civil aviation. In recognition of this fact, the Congress provided, in Section 316 of the Act, for the Administrator to protect that type of information by prohibiting disclosure if it would be "detrimental to the safety of persons traveling in air transportation." Congress specified that disclosure would not be required, notwithstanding any provision of the Freedom of Information Act that would otherwise be applicable. Moreover, these provisions are not contrary to any Executive Order applying to national security. Therefore, under paragraph (e), the airport operator must restrict access to its security program to those who have an operational need-to-know.

G. CHANGED CONDITIONS AFFECTING SECURITY

With respect to § 107.7, which contains the procedures to be followed if there is a change in conditions on the airport which affects security, one commenter requested clarification as to who determines when a security program becomes inadequate. Section 107.7 requires the airport operator to make the initial determination as to the program's continued adequacy after a change in conditions occurs. This determination would be subject to FAA review.

H. AMENDMENT OF SECURITY PROGRAM BY AIRPORT OPERATOR

1. FIELD OFFICE INVOLVEMENT

With respect to the procedures in § 107.9 for amending security programs by airport operators, one commenter believed that they derogate the Air Transportation Security Field Office's responsibility in favor of the Regional Office. Another felt that the Regional Director should be able to modify proposed amendments. Although new § 107.9 provides specific procedures for submission of requests for amendment directly to the Regional Director, the FAA sees no reason to provide the Regional Director with specific authority to amend a proposal, since it is expected that modification at an early stage can be accomplished by mutual agreement between the Regional Director and the airport operator. It should be noted that when amendments are submitted to the Regional Director, the involvement of the operational field element in review of these will not be changed.

2. COORDINATION WITH TENANTS

Another commenter believed that each air carrier operating on an airport should approve in writing each proposed amendment. Although coordination of the security program provisions with air carrier tenants would be a reasonable method of ensuring their cooperation, understanding, and support, the FAA believes that it would be impractical for the airport operator to be required to submit proposed amendments to the tenants for their prior written approval.

3. REGIONAL DIRECTOR APPROVAL

One commenter wanted the failure of the Regional Director to notify the airport operator in writing of approval or disapproval of the amendment to constitute approval. The FAA believes under most circumstances, 15 days should be sufficient for approval or disapproval by the Regional Director. Every effort will be made, including close cooperation with the airport operator, to ensure that a decision is made within this time period. However, it would not be in the public interest to provide for automatic approval after a specific time on matters dealing with aviation safety.

I. AMENDMENT TO SECURITY PROGRAM BY FAA

Concerning amendments to security programs by the FAA under § 107.11, one commenter felt that the Administrator should approve all amendments for the purpose of standardization. A small number of commenters were of the opinion that airport operators should be granted the same period for response as the Administrator under § 107.9, i.e., 30 days instead of seven.

The FAA believes that, since security programs are approved by the Regional Director, the Director should have the authority to amend these programs under ordinary circumstances. Complete standardization is neither possible nor desirable, because airports have security problems of an individual character. However, to the extent that uniformity is possible, it will be effected through FAA security policy.

The seven-day period for response to amendments proposed by the FAA has been in use as a minimum time period for over five years without any known problem. However, after consideration of the comments, the FAA agrees that a minimum response period of 30 days would be more reasonable. Therefore, the section, as adopted, has been changed to provide for this response period.

J. SECURITY OF AIR OPERATIONS AREAS

1. AIRPORT TENANT RESPONSIBILITY

A number of commenters noted that the provisions of proposed § 107.13 would eliminate the exceptions contained in current §§ 107.3(a)(2)(i)(d), 107.9(b), and 107.11(b)(2). These exceptions relieve the airport operator of the responsibility for controlling unauthorized access to, and requiring personal and vehicle identification for, AOAs that are exclusively occupied or controlled by an air carrier required to have a security program under § 121.538.

Several commenters argued that the change would give responsibility to airport operators for areas over which

they might exercise little or no control. They referred to the provisions of long term lease arrangements or other legal restrictions, and asserted that airport operators would have no power to demand compliance. Others contended that airport operators are not economically or physically capable of exercising this responsibility. Some commenters argued that each tenant has responsibility, or should be delegated responsibility, for security in its own leased area. A few felt that there would be "confusion and conflict."

After consideration of these comments, the FAA has determined that the airport operator should not be required to share the responsibility for control of persons and ground vehicles entering, and moving within, an air carrier's exclusive area, and § 107.13, as adopted, provides this relief. An "exclusive area" is defined in new § 107.1(b)(3) as that part of an AOA for which an air carrier has agreed in writing with the airport operator to exercise exclusive security responsibility under an approved security program or a security program used in accordance with § 129.25.

Although an area may be exclusively controlled or occupied by an air carrier, it can have an effect on the security of other areas of the airport. The closest coordination of security activities is needed between all airport tenants, including those subject to §§ 121.538 and 129.25. The airport operator is in the best position to act as the necessary focal point for this coordination.

Section 107.13 provides that the airport operator is not required to exercise the control functions specified in that section with respect to an air carrier's exclusive area. To ensure a coordinated security effort, the rule requires that the procedures, facilities, and equipment used by the air carrier to perform those functions must be appended to, or described in, the airport security program. The program must also contain the procedures by which the air carrier will notify the airport operator when procedures, facilities, and equipment are not adequate to perform the control functions.

The FAA agrees that airport tenants are frequently in the best position to know their own security needs and, because of their direct involvement, are the ones who can effectively implement procedures in their areas. An effective overall airport security program can be achieved only if all concerned are involved in its design and implementation.

It should be emphasized that nothing in § 107.13 prevents any airport tenant from accepting responsibility of the security of its leased area, or from carrying out its own security program. The tenant's program and the airport security program must be compatible; however, this can be achieved effectively by making appropriate sections of all tenants' security programs, including those of air carriers, a part of the airport security program.

2. SECURITY COSTS

Some airport commenters were concerned that they would have substantially increased costs because of the need for added patrols, guards and other added measures. Air carrier commenters were also concerned because they anticipated that airport operators would pass their increased costs on to them, or require them to have costly security measures or facilities beyond those currrently required by the air carrier's FAA approved security program.

The FAA believes that there is little likelihood of increased costs for either airport operators or airport tenants, including air carriers, as a result of § 107.13, as adopted. Where the security measures of tenants other than air carriers are already adequate, the provision does not require the airport operator to provide any additional security measures, and, the current practice of the acceptance of responsibility by these tenants may be continued. Second, it is not anticipated that any additional air carrier security measures will be needed where the level of security presently provided, pursuant to an FAA approved security program, is already acceptable. While modification of specific measures or procedures used by an air carrier at particular airport may be necessary to achieve compatibility with the airport's security program, this should not result in a significant overall cost increase.

3. ACCESS TO AOAS

A small number of commenters on § 107.13 would substitute the word "controlling" for "preventing" in paragraph (a), which requires control of access to each AOA, including methods for "preventing" entry by unauthorized individuals and ground vehicles. Section 107.13(a) merely requires items described in the security program to be put into use. It does not impose absolute liability for unauthorized entry on the airport operator. Therefore the FAA believes the suggested substitution is unnecessary.

4. UNAUTHORIZED PERSONS AND VEHICLES

Two commenters requested a definition of "unauthorized persons and ground vehicles." For the purpose of § 107.13, an unauthorized person or ground vehicle is one whose entry is not approved by the airport operator or by the air carrier, for an exclusive area. Procedures for determining which persons and ground vehicles are authorized must be set out in the security program.

5. MEANS OF IDENTIFICATION

Some commenters believed personal recognition as a means of identification is untrustworthy and recommended the use of identification media in all cases. Personal recognition is accepted by security experts and is used in the most secure areas, such as top secret facilities, as the most trustworthy system of identification. It is more useful than other systems of identification at small, low volume airports. The requirement of carrying identification media under all conditions has therefore been eliminated.

6. CLARIFYING CHANGES

For clarity, changes to certain language have been made in § 107.13. The word "contained" in the introductory clause in § 107.13 is replaced with the word "described." In paragraph (a) the words "or attempted penetration" have been added.

K. LAW. ENFORCEMENT SUPPORT

1. RESPONSE TIME

In regard to the law enforcement support required by § 107.15, some commenters endorsed the section as written and applauded the increased flexibility it provides. Others agreed with the concept, but were of the opinion that a required one-minute response, whether stated in the rule or established as a condition for approval of security programs, was unrealistic. Some reasons given for this opinion were that such a restriction would limit the officers to the vicinity of the checkpoint, and would effectively eliminate the intended flexibility. Of those who favored the flexibility, but who also objected to the one-minute response constraints, a small number observed that a maximum of three minutes with an average response of one minute was more realistic. In this regard, it was noted by one commenter that part 139 provides for a period between three and four and one-half minutes for emergency vehicle response.

New § 107.15 allows airport operators to adopt, with FAA approval, the most efficient system of law enforcement support to meet the individual needs of the vast variety of airports and conditions. The Federal Aviation Act of 1958, as amended, requires, and experience at United States airports demonstrates the need for, law enforcement presence. That same experience and the experience at airports in other countries indicates that the specific form of LEO presence should vary depending on a number of factors including the volume of passenger traffic

and the configuration of the terminal screening point.

In the preamble of NPRM 77-8, the FAA suggested one minute as the maximum permissible time under the current conditions. It is not possible to specify a minimum response time in the regulation, because it is necessary to evaluate the individual characteristics of the airport and the specific capability of the support system being proposed. Minimum response time for emergency vehicles under Part 139 should not be compared with those for security threats since the distances involved and the nature of the response are not the same.

2. FLEXIBLE RESPONSE SYSTEM

Other commenters felt that the time-tested deterrent of the visible presence of an officer at the screening point and the protection provided to screening personnel and passengers by "front line" physical presence could not be provided by a flexible response system. A few contended that a flexible response system lacked the capability to interdict hijackers, terrorists, and other persons threatening criminal violence.

It should be emphasized that not all airports have configurations that will permit a flexible system of LEO support in lieu of stationing an LEO at each screening point. Moreover, even at an airport that lends itself to a flexible system, some screening points may still require that an LEO be stationed at the screening point. In addition, LEO visibility does have an important deterrent effect and must be considered in the development of any support system in which the LEO is not physically located at the screening point.

3. LEGAL OBJECTIONS

In its comments the Criminal Division of the Department of Justice (DOJ) took the position that the Congress, in enacting Section 316 of the Act, endorsed the LEO's presence at the screening point as prescribed in § 107.4, which had already been adopted. It suggested that, in view of this and the recent history of the effectiveness of the LEO's presence at the screening point, the rule should require a provision in security programs for law enforcement presence at the screening point as well as other airport areas requiring that presence.

The DOJ indicated that "presence" could contemplate an LEO patrolling in the immediate area of the screening point, but that proposed § 107.15 contains very broad standards which may not provide for a quick law enforcement response. For this reason it suggested that the rule provide that the response not fall below a minimum interval of time, arguing that the LEO cannot be "present" at the screening point within the ordinary meaning of the word if the response time to the screening point is greater than one minute. In addition, the DOJ contended that because the regulation is so broadly structured and because the physical designs of the nation's airports, as well as the security devices and methods to be used at each of those airports, could vary greatly, a subjective determination by the FAA would be required in each instance to determine whether or not each individual airport operator was in compliance.

The FAA does not agree with the DOJ's position that Section 316, in effect, requires the presence of an LEO at the screening point in every case. The FAA recognizes that the Congress, in enacting Section 316, statutorily endorsed the security policies and procedures of the FAA that were in effect at the nation's airports at the time. However, although it is clear that the Congress intended that the level of aviation security be maintained and that security programs be uniformly effective, it chose not to specifically require the LEO to be physically located at the screening point. Instead it provided that the LEO presence at the airport be "adequate to ensure the safety of persons traveling in air transportation or intrastate air transportation from acts of criminal violence and aircraft piracy."

In so doing, the Congress left to the Administrator the technical decision as to what law enforcement presence is adequate to provide this protection at each airport. While law enforcement presence demands a security program which provides an effective response to each screening point, it does not preclude the use of more efficient and effective systems of LEO support where the same or a higher level of security would result. In view of this the FAA believes that adoption of the proposed rule is consistent with the explicit directive and the intent of Congress.

As noted by the DOJ, § 107.15 does not contain specific directives as to how law enforcement support is to be provided. However, for a security program to be approved, it will have to describe the law enforcement support provided by the airport operator with sufficient specificity to allow an evaluation of its potential effectiveness and a determination of the level of security provided. Moreover, from the inception of this program in 1973, all airport security programs, including those providing for law enforcement support, have been approved on an individual basis predicated on an evaluation of the particular system. For this reason, the FAA does not anticipate any difficulty in determining whether a program provides for adequate law enforcement visibility and for an effective response to each passenger screening station.

4. SCREENING PROCESS

A few commenters also advocated the concept of one person carrying out the both screening process and the law enforcement functions at certain small airports. The FAA has conducted tests of systems that would allow the use of one person to carry out both the screening process and the law enforcement functions. These tests have shown that these systems can provide adequate security, and they are being authorized by the Administrator where appropriate.

L. COST OF LAW ENFORCEMENT SUPPORT

Generally, all the commenters on proposed § 107.15(c), which would require the airport operator to provide law enforcement officers to support passenger screening systems required by Part 129, were concerned with the cost of, and the payment for, this service. The principles of comity and reciprocity were advanced by some as reasons for requiring the United States Government to bear all the costs involved. Others believed that the foreign air carriers should pay for their own security in the United States.

Meeting the costs of compensation for law enforcement services is an economic issue requiring resolution by the airport operators, the air carriers (both foreign and domestic) and the Civil Aeronautics Board. However, the United States' position has been that security is a service which should be paid for by the recipient of that service through the passenger fare structure, as are other safety-related operating costs incurred by the air carrier. Therefore, the cost of law enforcement support for passenger screening which is charged to the air carrier by the airport operator can be expected to be passed on to the passenger.

M. LAW ENFORCEMENT OFFICERS

1. UNIFORMS

There were several comments concerning the requirement in § 107.17(a)(2) that LEOs be in uniform. Two commenters felt that the police administrator (or an equal) should prescribe dress for officers, since a uniform might not be advantageous under all circumstances. One commenter remarked that some off-duty policemen, who might be used as airport LEOs, are prohibited from wearing their uniforms by departmental regulations.

The FAA believes uniforms are essential for public recognition. Moreover, where the flexible response con-

cept is adopted with officers patrolling in the terminal rather than stationed at the screening point, there is an even greater need for the LEO to be immediately recognizable as a police officer, both by the public and by fellow officers. The design and style of the uniform will remain the prerogative of the responsible agency; however, the uniform must be one that can be easily recognized by the traveling public as a police uniform.

2. TRAINING PROGRAMS

A few commenters applauded the FAA for setting high standards for training programs. Others noted that, as proposed, the standards were unnecessarily stringent and would require the replacement of many security personnel at a greatly increased and unjustified cost. A large number of the commenters felt that the FAA should establish only the minimum standards, and that they should be the same as those of the local jurisdiction furnishing LEO support. In addition, a number of commenters noted that many aspects of regular police duties are not required to adequately support an airport security program and that establishing standards that would call for training to meet the broadest spectrum of police duties is not necessary.

After further consideration, the FAA has determined that proposed paragraph (b) of § 107.17 (adopted as § 107.17(c) and (d)) should be modified in response to the public comments received. Either the State or local training standards will be adequate for law enforcement officers who protect persons and property in air transportation. Further, the scope of the training need only cover those aspects of police duties necessary to adequately support the airport security program. Where no State or local standards are set down, the airport operator must present a training program acceptable to the Administrator. The FAA will work with the airport operator to tailor training requirements to the airport's needs.

Private law enforcement personnel have always been acceptable and nothing in this rule is designed to preclude their use. However, standards required for the State or local police must also be met by private law enforcement officers.

N. CARRIAGE OF FIREARMS, EXPLOSIVES AND INCENDIARY DEVICES

1. GENERAL COMMENTS

Most of the commenters to Notice 77-8 made reference to proposed § 107.21 which would have provided that no person on an airport may have any firearm, explosive, or incendiary device, on or about that individual's person or property in violation of any applicable State or local law. A majority of these commenters expressed views on no other section.

Commenters in opposition to the proposal believed that the rule was unnecessary, arguing that local laws are adequate to cope with the existing situation. Many of the commenters noted that the wide variance in the weapons laws could lead to an unacceptable lack of uniformity. Others felt that passengers would be in peril of many local laws both existing and those which might be enacted. Some critics pointed out that, although hijackings in the United States have declined, this proposal expanded the FAA role, not only to the terminal area, but to the entire airport. These critics felt that the rule would do nothing to stop hijacking while it would infringe on the rights of persons who may or may not be in air transportation as defined in the Act. In the same vein, they were of the opinion that if the rule were not restricted to the area between the airplane and the screening point, the provision would be unrealistic, repressive, and lead to "sterile" airports.

A number of commenters endorsed the objectives of this section, but argued that it could be redrafted to make it more realistic. Most of these commenters suggested that the rule be modified to take effect between the screening point and the aircraft.

The FAA agrees that the only place on the airport where, as a practical matter, illegal firearms, explosives, or incendiary devices in a person's possession are likely to be discovered is at the passenger screening point. Further, should a weapon be found at a point on the airport other than the screening point or within a sterile area, it would remain subject to any local laws prohibiting or limiting the carriage of weapons. Modifying the rule to use the screening point and sterile area would allow the elimination of the reference to local laws in the rule.

For these reasons, the FAA has modified this section by prohibiting unauthorized carriage of firearms, explosives, or incendiary devices by persons in or entering sterile areas or presenting themselves for inspection at established passenger screening points. It should be noted that the rule does not prohibit the legal carriage of firearms for sporting or other purposes when those firearms are not accessible to unauthorized persons in a sterile area. It also specifies those persons to whom it does not apply because of their need to carry a firearm in the performance of their duty.

2. CONSTITUTIONAL OBJECTIONS

As already noted, a small number of commenters objected to proposed §§ 107.1(a)(3) and 107.21 as unconstitutional, and as an unjustified extension of Section 316 of the Act. One implied that the proposal violated Article Four, Sections One and Two, the full faith and credit clause and the privileges and immunities clause. Another commenter asserted that the proposal was an "inappropriate impediment" to interstate commerce and, therefore, unconstitutional under Article One, Section Eight, the commerce clause. Finally, some commenters contended that the proposal violated the Second Amendment right of the people to keep and bear arms and violated a general right to self-protection.

The FAA does not consider these constitutional arguments to have merit. The full faith and credit clause does not prohibit the FAA from making the carriage of a weapon a violation merely because its carriage is permitted under the laws of a State. The privileges and immunities clause is inapplicable in that it does not prohibit the Federal Government from imposing standards on the carriage of weapons.

As to the commerce clause, the addition of Section 316, Air Transportation Security, to the Federal Aviation Act of 1958, was clearly a reasonable exercise of the Congress' broad authority under the Constitution to regulate commerce. Moreover, § 107.21 is within the Congressional mandate in Section 316 to protect persons and property aboard aircraft in air transportation and intrastate air transportation against acts of criminal violence and aircraft piracy.

Finally, while the Second Amendment protects the right of the people to bear arms, it does not confer an absolute right on the individual to carry a weapon at all times and in all places.

O. RECORDS

In response to the record requirements of § 107.23, a few commenters said they did not oppose the requirement as long as requests are restricted to records which are reasonably available, pertain to the immediate disposition of detainees, and apply only to aviation security matters. Others felt that the FAA should generate its own records or compensate airport operators for maintaining them. A few believed there was no cost-benefit to this provision. A small number stated that the proposal duplicated air carrier responsibilities and suggested that the burden should either rest on the air carriers entirely or be competely eliminated.

Accurate information relating to the operation of the civil aviation security program is essential for the evaluation of its effectiveness, for determining its future direction, and for meeting the Congressional requirement for semian-

nual reports in Section 315 of the Act. The FAA believes that the airport operator is best qualified to ensure that this information is maintained and made available.

As adopted by this amendment, § 107.23 will become effective 30 days after notice has been published in the FEDERAL REGISTER that the requirements of that section have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

ADOPTION OF THE AMENDMENT

Accordingly, Part 107 of the Federal Aviation Regulations (14 CFR Part 107) is amended effective March 29, 1979, as follows:

1. Compliance with § 107.23 is not required until 30 days after a notice of approval of the requirements of that section by the Office of Management and Budget is published in the FEDERAL REGISTER.

2. Part 107 is revised to read as follows:

PART 107—AIRPORT SECURITY

Sec.
107.1 Applicability and definitions.
107.3 Security program.
107.5 Approval of security program.
107.7 Changed conditions affecting security.
107.9 Amendment of security program by airport operator.
107.11 Amendment of security program by FAA.
107.13 Security of air operations areas.
107.15 Law enforcement support.
107.17 Law enforcement officers.
107.19 Use of Federal law enforcement officers.
107.21 Carriage of firearms, explosives, or incendiary devices.
107.23 Records.

AUTHORITY: (Secs. 313, 315, 316, and 601, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354, 1356, 1357, and 1421); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).)

§ 107.1 Applicability and definitions.

(a) This part prescribes aviation security rules governing—

(1) The operation of each airport regularly serving scheduled operations of a certificate holder to whom § 121.538 of this chapter applies;

(2) The operation of each airport regularly serving scheduled operations of a permit holder to whom § 129.25 of this chapter applies; and

(3) Each person who is in or entering a sterile area on an airport described in paragraph (a)(1) or (a)(2) of this section.

(b) For purposes of this part—

(1) "Airport Operator" means a person who operates an airport regularly serving scheduled operations of a certificate holder or a permit holder to whom § 121.538 or § 129.25 of this chapter applies;

(2) "Air Operations Area" means a portion of an airport designed and used for landing, taking off, or surface maneuvering of airplanes;

(3) "Exclusive area" means that part of an air operations area for which an air carrier has agreed in writing with the airport operator to exercise exclusive security responsibility under an approved security program or a security program used in accordance with § 129.25;

(4) "Law enforcement officer" means an individual who meets the requirements of § 107.17; and

(5) "Sterile area" means an area to which access is controlled by the inspection of persons and property in accordance with an approved air carrier passenger screening program or a program used in accordance with § 129.25.

§ 107.3 Security program.

(a) No airport operator may operate an airport subject to this part unless it adopts and carries out a security program that—

(1) Provides for the safety of persons and property traveling in air transportation and intrastate air transportation against acts of criminal violence and aircraft piracy;

(2) Is in writing and signed by the airport operator or any person to whom the airport operator has delegated authority in this matter;

(3) Includes the items listed in paragraph (b) of this section; and

(4) Has been approved by the Regional Director.

(b) Each security program required by paragraph (a) of this section must include at least the following:

(1) A description of each air operations area, including its dimensions, boundaries, and pertinent features.

(2) A description of each area on, or adjacent to, the airport which affects the security of any air operations area.

(3) A description of each exclusive area, including its dimensions, boundaries, and pertinent features, and the terms of the agreement establishing the area.

(4) The procedures, and a description of the facilities and equipment, used to perform the control functions specified in § 107.13(a) by the airport operator and by each air carrier having security responsibility over an exclusive area.

(5) The procedures each air carrier having security responsibility over an exclusive area will use to notify the airport operator when the procedures, facilities, and equipment it uses are not adequate to perform the control functions described in § 107.13(a).

(6) A description of the alternate security procedures, if any, that the airport operator intends to use in emergencies and other unusual conditions.

(7) A description of the law enforcement support necessary to comply with § 107.15.

(8) A description of the training program for law enforcement officers required by § 107.17.

(9) A description of the system for maintaining the records described in § 107.23.

(c) The airport operator may comply with paragraph (b) of this section by including in the security program as an appendix any document which contains the information required by paragraph (b).

(d) Each airport operator shall maintain at least one complete copy of its approved security program at its principal operations office, and shall make it available for inspection upon the request of any Civil Aviation Security Inspector.

(e) Each airport operator shall restrict the distribution, disclosure, and availability of information contained in the security program to those persons with an operational need-to-know and shall refer requests for such information by other than those persons to the Director of the Civil Aviation Security Service of the FAA.

§ 107.5 Approval of security program.

(a) Unless a shorter period is allowed by the Regional Director, each airport operator seeking initial approval of a security program for an airport subject to this part shall submit the proposed program to the Regional Director at least 90 days before any scheduled passenger operations are expected to begin by any certificate holder or permit holder to whom § 121.538 or § 129.25 of this chapter applies.

(b) Within 30 days after receipt of a proposed security program, the Regional Director either approves the program or gives the airport operator written notice to modify the program to make it conform to the applicable requirements of this part.

(c) After receipt of a notice to modify, the airport operator may either submit a modified security program or petition the Administrator to reconsider the notice to modify. A petition for reconsideration must be filed with the Regional Director.

(d) Upon receipt of a petition for reconsideration, the Regional Director reconsiders the notice to modify and either amends or withdraws the notice or transmits the petition, together with any pertinent information, to the Administrator for consideration.

(e) After review of a petition for reconsideration, the Administrator disposes of the petition by either directing the Regional Director to withdraw or amend the notice to modify, or by affirming the notice to modify.

§ 107.7 Changed conditions affecting security.

(a) After approval of the security program, the airport operator shall follow the procedures prescribed in paragraph (b) of this section whenever it determines that any of the following changed conditions has occurred:

(1) Any description of an airport area set out in the security program in accordance with § 107.3(b)(1), (2), or (3) is no longer accurate.

(2) The procedures included, and the facilities and equipment described, in the security program in accordance with § 107.3(b)(4) and (5) are not adequate for the control functions described in § 107.13(a).

(3) The airport operator changes any alternate security procedures described in the security program in accordance with § 107.3(b)(6).

(4) The law enforcement support described in the security program in accordance with § 107.3(b)(7) is not adequate to comply with § 107.15.

(b) Whenever a changed condition described in paragraph (a) of this section occurs, the airport operator shall—

(1) Immediately notify the FAA security office having jurisdiction over the airport of the changed condition, and identify each interim measure being taken to maintain adequate security until an appropriate amendment to the security program is approved; and

(2) Within 30 days after notifying the FAA in accordance with paragraph (b)(1) of this section, submit for approval in accordance with § 107.9 an amendment to the security program to bring it into compliance with this part.

§ 107.9 Amendment of security program by airport operator.

(a) An airport operator requesting approval of a proposed amendment to the security program shall submit the request to the Regional Director. Unless a shorter period is allowed by the Regional Director, the request must be submitted at least 30 days before the proposed effective date.

(b) Within 15 days after receipt of a proposed amendment, the Regional Director issues to the airport operator, in writing, either an approval or a denial of the request.

(c) An amendment to a security program is approved if the Regional Director determines that—

(1) Safety and the public interest will allow it, and

(2) The proposed amendment provides the level of security required by § 107.3.

(d) After denial of a request for an amendment, the airport operator may petition the Administrator to reconsider the denial. A petition for reconsideration must be filed with the Regional Director.

(e) Upon receipt of a petition for reconsideration, the Regional Director reconsiders the denial and either approves the proposed amendment or transmits the petition, together with any pertinent information, to the Administrator for consideration.

(f) After review of a petition for reconsideration, the Administrator disposes of the petition by either directing the Regional Director to approve the proposed amendment or affirming the denial.

§ 107.11 Amendment of security program by FAA.

(a) The Administrator or Regional Director may amend an approved security program for an airport, if it is determined that safety and the public interest require the amendment.

(b) Except in an emergency as provided in paragraph (f) of this section, when the Administrator or the Regional Director proposes to amend a security program, a notice of the proposed amendment is issued to the airport operator, in writing, fixing a period of not less than 30 days within which the airport operator may submit written information, views, and arguments on the amendment. After considering all relevant material, including that submitted by the airport operator, the Administrator or the Regional Director either rescinds the notice or notifies the airport operator in writing of any amendment adopted, specifying an effective date not less than 30 days after receipt of the notice of amendment by the airport operator.

(c) After receipt of a notice of amendment from a Regional Director, the airport operator may petition the Administrator to reconsider the amendment. A petition for reconsideration must be filed with the Regional Director. Except in an emergency as provided in paragraph (f) of this section, a petition for reconsideration stays the amendment until the Administrator takes final action on the petition.

(d) Upon receipt of a petition for reconsideration, the Regional Director reconsiders the amendment and either rescinds or modifies the amendment or transmits the petition, together with any pertinent information, to the Administrator for consideration.

(e) After review of a petition for reconsideration, the Administrator disposes of the petition by directing the Regional Director to rescind the notice of amendment or to issue the amendment as proposed or in modified form.

(f) If the Administrator or the Regional Director finds that there is an emergency requiring immediate action that makes the procedure in paragraph (b) of this section impracticable or contrary to the public interest, an amendment may be issued effective without stay on the date the airport operator receives notice of it. In such a case, the Administrator or the Regional Director incorporates in the notice of the amendment the finding, including a brief statement of the reasons for the emergency and the need for emergency action.

§ 107.13 Security of air operations area.

(a) Except as provided in paragraph (b) of this section, each airport operator shall use the procedures included, and the facilities and equipment described, in its approved security program, to perform the following control functions:

(1) Controlling access to each air operations area, including methods for preventing the entry of unauthorized persons and ground vehicles.

(2) Controlling movement of persons and ground vehicles within each air operations area, including, when appropriate, requirements for the display of identification.

(3) Promptly detecting and taking action to control each penetration, or attempted penetration, of an air operations area by a person whose entry is not authorized in accordance with the security program.

(b) An airport operator need not comply with paragraph (a) of this section with respect to an air carrier's exclusive area, if the airport operator's security program contains—

(1) Procedures, and a description of the facilities and equipment, used by the air carrier to perform the control functions described in paragraph (a) of this section; and

(2) Procedures by which the air carrier will notify the airport operator when its procedures, facilities, and equipment are not adequate to perform the control functions described in paragraph (a) of this section.

§ 107.15 Law enforcement support.

Each airport operator shall provide law enforcement officers in the number and in a manner adequate to support—

(a) Its security program;

(b) Each passenger screening system required by Part 121 of this chapter; and

(c) Each passenger screening system required by Part 129 of this chapter after June 29, 1979 or, after the date specified by the foreign air carrier involved, whichever date is earlier.

§ 107.17 Law enforcement officers.

(a) No airport operator may use any person as a required law enforcement officer unless, while on duty on the airport, the officer—

(1) Has the arrest authority described in paragraph (b) of this section;

(2) Is readily identifiable by uniform and displays or carries a badge or other indicia of authority;

(3) Is armed with a firearm and authorized to use it; and

(4) Has completed a training program that meets the requirements in paragraph (c) of this section.

(b) The law enforcement officer must, while on duty on the airport, have the authority to arrest, with or without a warrant, for the following violations of the crimimal laws of the State and local jurisdictions in which the airport is located:

(1) A crime committed in the officer's presence.

(2) A felony, when the officer has reason to believe that the suspect has commited it.

(c) The training program required by paragraph (a)(4) of this section must provide training in the subjects specified in paragraph (d) of this section and either—

(1) Meet the training standards, if any, prescribed by either the State or the local jurisdiction in which the airport is located, for law enforcement officers performing comparable functions; or

(2) If the State and local jurisdictions in which the airport is located do not prescribe training standards for officers performing comparable functions, be acceptable to the Administrator.

(d) The training program required by paragraph (a)(4) of this section must include training in—

(1) The use of firearms;

(2) The courteous and efficient treatment of persons subject to inspection, detention, search, arrest, and other aviation security activities;

(3) The responsibilities of a law enforcement officer under the airport operator's approved security program; and

(4) Any other subject the Administrator determines is necessary.

§ 107.19 Use of Federal law enforcement officers.

(a) Whenever State, local, and private law enforcement officers who meet the requirements of § 107.17 are not available in sufficient numbers to meet the requirements of § 107.15, the airport operator may request that the Administrator authorize it to use Federal law enforcement officers.

(b) Each request for the use of Federal law enforcement officers must be accompanied by the following information:

(1) The number of passengers enplaned at the airport during the preceding calendar year and the current calendar year as of the date of the request.

(2) The anticipated risk of criminal violence and aircraft piracy at the airport and to the air carrier aircraft operations at the airport.

(3) A copy of that portion of the airport operator's security program which describes the law enforcement support necessary to comply with § 107.15.

(4) The availability of State, local, and private law enforcement officers who meet the requirements of § 107.17, including a description of the airport operator's efforts to obtain law enforcement support from State, local, and private agencies and the responses of those agencies.

(5) The airport operator's estimate of the number of Federal law enforcement officers needed to supplement available State, local, and private law enforcement officers and the period of time for which they are needed.

(6) A statement acknowledging responsibility for providing reimbursement for the cost of providing Federal law enforcement officers.

(7) Any other information the Administrator considers necessary.

(c) In response to a request submitted in accordance with this section, the Administrator may authorize, on a reimbursable basis, the use of law enforcement officers employed by the FAA or by any other Federal agency, with the consent of the head of that agency.

§ 107.21 Carriage of firearms, explosives, or incendiary devices.

(a) Except as provided in paragraph (b) of this section, no person may have a firearm, an explosive, or an incendiary device on or about the individual's person or accessible property—

(1) When performance has begun of the inspection of the individual's person or accessible property before entering a sterile area; and

(2) When entering or in a sterile area.

(b) The provisions of this section with respect to firearms do not apply to the following:

(1) Law enforcement officers required to carry a firearm by this part while on duty on the airport.

(2) Persons authorized to carry a firearm in accordance with § 121.585 or § 129.27.

(3) Persons authorized to carry a firearm in a sterile area under an approved security program or a security program used in accordance with § 129.25.

§ 107.23 Records.

(a) Each airport operator shall ensure that—

(1) A record is made of each law enforcement action taken in furtherance of this part;

(2) The record is maintained for a minimum of 90 days; and

(3) It is made available to the administrator upon request.

(b) Data developed in response to paragraph (a) of this section must include at least the following:

(1) The number and type of firearms, explosives, and incendiary devices discovered during any passenger screening process, and the method of detection of each.

(2) The number of acts and attempted acts of air piracy.

(3) The number of bomb threats received, real and simulated bombs found, and actual bombings on the airport.

(4) The number of detentions and arrests, and the immediate disposition of each person detained or arrested.

Issued in Washington, D.C., on December 21, 1978.

NOTE: The reporting and/or record-keeping requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

LANGHORNE BOND,
Administrator.

[FR Doc. 78-36056 Filed 12-26-78; 8:45 am]

federal register

THURSDAY, DECEMBER 28, 1978

PART VII

FEDERAL TRADE COMMISSION

■

PROPRIETARY VOCATIONAL AND HOME STUDY SCHOOLS

Trade Regulation Rules

[6750-01-M]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

SUBCHAPTER D—TRADE REGULATION RULES

PART 438—PROPRIETARY VOCATIONAL AND HOME STUDY SCHOOLS

AGENCY: Federal Trade Commission.

ACTION: Final trade regulation rule.

SUMMARY: The Federal Trade Commission issues a final rule which requires proprietary vocational and home study schools to provide pro rata refunds to students who withdraw from their courses; to provide information to prospective students concerning the schools' graduation and placement records; and which extends the cooling-off period on vocational school enrollment contracts to fourteen days. The purpose of this rule is to alleviate currently abusive practices against vocational and home study school students and prospective students.

EFFECTIVE DATE: January 1, 1980.

FOR FURTHER INFORMATION CONTACT:

Walter C. Gross III, Federal Trade Commission, PM-H-221, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580; (202) 523-3814.

SUPPLEMENTARY INFORMATION: *16 CFR Part 438—Vocational Schools Trade Regulation Rule Statement of Basis and Purpose.*

A. *Introduction.*

On August 15, 1974, the Commission published for comment and public hearings a proposed trade regulation rule for proprietary vocational and home study schools. (*1*) Hearings on the proposed trade regulation rule were scheduled for six cities and were actually held in three cities (Boston, New York and Washington, D.C.) prior to the postponement of all rulemaking hearings by the enactment of the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act. (*2*) After the Commission amended its Rules of Practice to conform to the Magnuson-Moss Act, (*3*) the proposed rule was republished by the Commission on May 15, 1975, with an invitation to all interested parties to comment on the proposed rule. (*4*)

On September 29, 1975, the Presiding Officer published in the FEDERAL REGISTER a public notice listing the dates and locations of the public hearings to be conducted under the new procedures of the Magnuson-Moss Act. (*5*) Thereafter, public hearings were held in San Francisco, Los Angeles, and Chicago. (*6*) In the course of the public hearings, both those conducted before and after the adoption of the Magnuson-Moss Act, over 400 witnesses offered testimony over a span of 44 days. Among the witnesses were federal and state governmental officials, representatives of major trade associations representing the schools affected by the proposed rule, consumer groups, legal aid attorneys, economists, educational experts, school owners and operators, individual consumers and students, and sales representatives.

In the course of this rulemaking proceeding, the Commission has made a diligent effort to ensure that all affected interests in this proceeding, and all members of the public, have had an opportunity to offer comment on the rule. During the comment periods prior to the public hearings over 900 written comments were received from the public. (*7*) At the conclusion of the public hearings, another comment period was opened to permit persons to comment on the testimony received at those hearings. (*8*)

After the conclusion of the public hearings, reports were prepared by the Presiding Officer, (*9*) who made findings on the issues which had been designated by the Commission to focus the public hearings, (*10*) and the Commission staff. (*11*) Based on its analysis of the evidentiary record, the Commission's staff recommended that the Commission promulgate a revised trade regulation rule which would have required proprietary vocational schools to inform their prospective students of the schools' graduation and placement rates, to make pro rata refunds to students in the event of student cancellations, and to obtain "reaffirmations" of enrollment contracts. (*12*)

Under Section 1.13(h) of the Commission's rules of practice, the publication of the Staff Report initiated a post-record comment period which afforded the public the opportunity to comment on the staff's and Presiding Officer's reports. This comment period commenced on January 7, 1977, and concluded on May 31, 1977, after two time extensions had been granted by the Commission at the request of industry groups. During this period, nearly 200 written comments were received. (*13*) To facilitate comment during this final comment period, the Commission released to the public a computer index of the rulemaking record. (*14*) This computer index was prepared by the Commission's staff and was not reviewed by the Commission prior to being released to the public. The Commission sought to assist the public in researching the record by releasing this document.

At the close of this comment period, the Commission convened a special Commission meeting to permit interested persons to make direct presentations to the Commissioners themselves. (*15*) After carefully considering the rulemaking record, the Commission has voted to promulgate a trade regulation rule concerning proprietary vocational and home study schools.

B. *Summary of the Evidence.*

1. *Industry Profile.*

An estimated 7,000 to 8,000 schools comprise the vocational school industry. (*16*) The schools are customarily divided into two major categories: residence and correspondence. Residence schools (*17*) offer training in the conventional classroom setting; home study or correspondence schools provide instructional materials and teaching services through the mails.

(a) *Residence schools.*

The large majority of schools are residential. (*18*). The types of training they offer can be grouped in four generic categories: (*19*) trade and technical, (*20*) business office and secretarial, (*21*) flight (*22*) and cosmetology. (*23*) Residence schools generally operate on one of two time formats: a "fixed class" schedule, which groups students together in classes with specific matriculation and graduation dates; or an "open enrollment" scheme, which allows each student to enroll and complete the course at his or her own pace. (*24*) Certain types of residence schools, such as flight and cosmetology schools, divide their courses into two distinct segments: an academic portion conducted in classrooms, and a practical segment provided through clinical or hands-on experience. (*25*)

The length of courses varies widely among residence schools and is dependent upon the nature and complexity of the training involved. Courses offered by proprietary residence schools range in duration from six months to four years, with an average course length of nine months. (*26*)

The costs of private residence schools courses also vary considerably, depending on the length of the course and the type of training offered. While the average tuition cost for all such courses was $1,400 in 1973-74, average tuition for various types of residence programs ranged from $460 to $2,590. (*27*)

(b) *Home Study Schools.*

While home study schools offer courses in approximately 300 different subject areas, (*28*) the majority of their students train for a limited number of trade and technical occupations. (*29*) The instructional format of home study schools involves the sequential mailing of lessons to the student, who studies the material, completes a lesson examination, and re-

turns the examination to the school. The school then grades the lesson (and in some instances provides additional comments and instruction), and returns the graded lesson along with the next set of instructional materials to the student. (*30*)

Because of the individual time flexibility allowed home study students, the lengths of correspondence courses are not standardized. (*31*) A 1974 study found that home study courses took an average of 10 months to complete, (*32*) while a 1976 study estimated an average completion time of 14 months. (*33*)

Tuition costs for home study courses averaged $570 in 1973. (*34*) Again, the variance among individual courses is substantial: one large home study school offered courses ranging in cost from $295 to $1,795 in 1975, (*35*) while another charged between $1,375 and $1,795 in that year. (*36*)

Some school's courses consist of a combination of home study and residence training. In that format, the student pursues the academic portion through correspondence, and then completes by attending a practical training segment at the school.

(c) *Size of Schools—Enrollments and Revenues.*

The record shows that proprietary vocational schools constitute a substantial industry, in terms of both enrollments and revenues.

The industry as a whole enrolls over two million students a year. (*37*) Although schools vary greatly in size, (*38*) large schools predominate in the industry in terms of their market shares of total enrollments. (*39*) In both the residence and home study sectors, a relatively small percentage of schools account for a substantial proportion of all enrollments. (*40*) The ten largest home study schools, for example, enroll approximately 75% of the one million students attending accredited correspondence schools. (*41*) Another factor contributing to the tendency toward market dominance by a small number of schools is the fact that several major corporations own and operate large chains of schools. (*42*)

Industry revenues are also sizable. Students paid $1.7 billion for their courses in 1972, $2.5 billion in 1973, and it is projected that annual revenues will exceed $5 billion by 1985. (*43*)

(d) *Accreditation, Approval and Licensure of Schools.*

Accredited schools are a minority of all proprietary schools; approximately 22% of the schools were accredited according to 1974 statistics. (*44*) However, accredited schools account for the vast majority of all students enrolled, as unaccredited schools tend to be smaller institutions. The four major trade associations representing proprietary vocational schools have also established related accrediting units. The associations are the:

(1) Association of Independent Colleges and Schools (AICS)—business office and secretarial programs;

(2) National Association of Trade and Technical Schools (NATTS)—trade and technical schools;

(3) National Home Study Council (NHSC)—all types of correspondence courses; and

(4) Cosmetology Accrediting Commission (CAC)—cosmetology schools. (*45*)

More than two-thirds of all proprietary vocational schools are approved for participation in the veterans' benefits program. (*46*) Such approval enables schools to enroll veterans under the Congressionally authorized programs that subsidize veterans while they attend school. (*47*) Although overall administration of the program is the responsibility of the Veterans Administration, the determination of schools' eligibility for the program is delegated to the individual states. (*48*)

Most of the states require that proprietary vocational schools be licensed. The prerequisites to licensure vary widely from state to state, with different norms established for facilities, instructional personnel, equipment, enrollment practices, student qualifications, disclosures, refund policies, and reissuing of licenses. (*49*)

A discussion of the evidence concerning the efficacy of the various forms of accreditation, approval and licensure appears at section B(8)(c), below.

2. *Student Profile*

The proprietary vocational school student population is characterized by a wide spectrum of demographic attributes such as age, race, income, socioeconomic background education, and job experience. The evidence in the public record, however, demonstrates a high degree of similarity among many students who take vocational school courses.

(a) *Demographic Characteristics*

The large majority of residence school students are young; the average enrollee in such schools is 20 years old. (*50*) Correspondence school students are typically somewhat older, although the majority of non-veteran home study students are enrolled by their early to mid-twenties. (*51*) Veteran enrollees, who comprise about 40% of home study students, (*52*) have an average age of 30. (*53*)

The typical vocational student is a high school graduate who majored in a vocational or general program, rather than a college-preparatory curriculum. (*54*) Many students of both residence and home study schools have previously attempted some form of postsecondary education, but only a small percentage have completed those programs. (*55*)

Proprietary vocational students frequently come from families of limited educational attainment; according to one nationwide study, 32% of vocational school students' parents were high school drop-outs, and fewer than 10% had college degrees. (*56*)

Most residence school students have little or no full-time work experience before enrolling. (*57*) Those who have worked were generally employed in low-income positions. (*58*) Most correspondence school students who are non-veterans are employed but are also earning relatively low salaries. (*59*) Veterans have both higher employment rates and higher incomes than their non-veteran counterparts in the home study population. (*60*)

(b) *Motivations, Financial Aid Usage, and Information Sources of Enrollees*

Virtually all private residence school students enroll in order to obtain new or better jobs. (*61*) While a higher percentage of home study students enroll for a vocational reasons than do residence students, the available evidence indicates that most correspondence students also are motivated primarily by occupational goals. (*62*)

The majority of proprietary vocational school students receive some form of government financial assistance. (*63*) About two-thirds of trade and technical school enrollees receive aid, almost all through the Federal Guaranteed Student Loan or veterans' benefits programs. (*64*) Slightly more than half of the students in other programs—such as business, cosmetology, flight and medical assistant training—receive government aid through these programs, but in addition, a substantial number receive assistance from other federal and state programs. (*65*) Students in accredited correspondence schools also rely heavily on government financial assistance; over a third use veterans' benefits and one-fourth receive Guaranteed Student Loans. (*66*)

The record evidence shows that most students make their enrollment decisions without adequate information or employment counseling. (*67*) Studies have shown that most students make their enrollment decisions independently of any external sources of information and counseling, and the remainder rely more heavily on the school's advertising and sales presentations than on any other source. (*68*) Only a small minority of students seek information or advice from professional career counselors and former teachers. (*69*)

Legal aid attorneys, consumer organizations, and consumers themselves testified at the hearings in this proceeding that prospective students

suffer from a paucity of information concerning job potential, salaries, drop-out rates and other facts relevant to their enrollment decisions. (70) Government reports and conferences have pointed to the same problem. (71)

(c) *Vulnerability of Enrollees*

The pattern that emerges from the record is that the typical vocational school student is unusually vulnerable to deceptive and misleading advertising and to unfair sales and enrollment practices. Because the typical student is young, has limited educational and work experience, and is either unemployed or earning a low salary, he or she is likely to be more susceptible than the general adult population to unfair sales practices. Moreover, prospective students are motivated to enroll primarily by a desire to obtain prestigious, well-paid jobs in order to escape the low wage/mediocre job syndrome. The vulnerability of such students is compounded by their lack of information concerning vocational education and career opportunities. (72)

3. *Representations and Claims Made by Proprietary Vocational Schools*

The record shows that, in their efforts to attract students, many vocational schools make a variety of false and misleading claims in their advertising and sales presentations. The claims create false impressions about two general categories of information: jobs and earnings; and non-career related information about a school.

(a) *Job and Earnings Claims*

Claims about the job and earnings prospects the vocational student may expect upon graduation are the most important and prevalent forms of advertising used to solicit enrollees. Job and earnings representations may be either specific claims about the success of a particular school's graduates or general claims concerning the job market and earnings potential in a career field.

(1) *Specific Claims*

Specific job and earnings claims include guarantees of jobs upon graduation; advertisements indicating the offering of jobs rather than training; representations about the adequacy of a course for the purpose of obtaining employment; and claims about the placement and earnings success of a school's own graduates. These claims are frequently false, misleading, or deceptive and their use is well-documented in the record. (73)

Explicit guarantees of jobs upon graduation are almost always deceptive, since differences among students' capabilities and fluctuations in job market demand make it virtually impossible for any school to be sure of placing every enrollee in a suitable job. (74)

Similarly, vocational school advertising which purports to offer jobs rather than training is deceptive on its face. Such "help wanted" advertisements, which usually appear in newspapers' classified sections, fail to reveal that the advertiser is a school offering training rather than an employer seeking job applicants. (75)

Another variant of the job offer claim is the representation by a school that it is hiring for civil service positions. Numerous schools have induced students to enroll under the false pretense that they were participating in government-sponsored training or hiring programs. (76) Similarly, some schools claim affiliation with well-known businesses and then falsely imply that the company will hire the student upon graduation. (77)

Some schools also misrepresent the adequacy of their training for obtaining employment in a particular field. Such misrepresentations usually involve the failure to disclose additional prerequisites to employment, such as higher-level education, work experience, and physical requirements imposed by governmental entities. (78)

Finally, deceptive claims regarding the success of a school's own graduates play an important role in inducing unfair enrollments of prospective students. Such misrepresentations include false or exaggerated promises of placement assistance;(79) the testimonials of a few satisfied students from a class of predominately unsuccessful graduates;(80) and claims which falsely claim(81) high placement percentages or success. (82)

While these claims may be literally truthful when applied to some portion of a school's graduates, they can seriously mislead prospective students. (83) Consumers understandably assume that schools which advertise a successful history of placement will be able to place them as well—although their "success" may be based on the experience of a small number of students. (84) Similar claims concerning possible earnings also convey the impression that the amount stated will be available to a typical graduate. (85)

For these reasons, the Commission has found that these claims are frequently deceptive, or have the capacity to deceive the average consumer. (86)

(2) *General Claims*

Unlike specific claims which rely on a school's own purported performance, a general claim is one which suggests employment success by drawing on external proxies such as projections of job market demand. General claims appear in several formats, the most common of which are: references to high employment or salary levels in particular fields; citations to projected employment and salary levels in the future; and predictions of rapid growth or demand for new skills in an occupation. (87) General claims are frequently derived from labor supply and demand studies and projections prepared by government and private agencies. (88) The U.S. Department of Labor's *Occupational Outlook Handbook* appears to be the most frequent source of data used in such claims. (89)

As with specific claims, general employment and earnings claims have been widely used in the industry(90) and are perceived by many consumers as references to the job and earnings potential of the school's own graduates. (91)

The record shows that a general statement of job opportunity—*e.g.*, "computer programmers are in big demand"—directed to vocational school consumers is potentially deceptive for a number of reasons. First, such claims create the impression that jobs will be made available to students who attend the school. In fact, the record shows that jobs are not uniformly or typically available to students who enroll in proprietary schools. (92)

Second, claims of general employment demand or potential salary expectations fail to disclose that these generalized employment data are the product of a complex statistical process and must be qualified to be correctly understood. The process encompasses a broad set of variables underlying the final data. The most significant of these include the degree of statistical error tolerated by the organization making the projections; the age of the data utilized; possible fluctuations in market forces; inflation; and local variations in the labor market. (93)

Every organization that produces this form of supply/demand data provides introductory material which explains its statistical and methodological assumptions and warns the reader that these assumptions are important for a correct interpretation of the information. (94) These caveats do not appear in proprietary school advertising.

Third, official publications that attempt to predict occupational trends usually include a discussion of the prerequisites to employment in a given field. (95) Such prerequisites include requirements for higher educational degrees, minimum work experience, union membership, licensing and certification requirements, and employer preferences for operating their own in-house training programs. (96) Thus, for example, a generalized claim that "computer programmers are in big demand" which fails to disclose that, in certain areas, a minimum of two years' work experience is required and that college degrees are preferred, would be deceptive. (97) The majority

of proprietary school advertisements in the record fail to disclose such employment prerequisites and conditions. (98)

(b) *Non-Career Related Claims*

Claims other than those concerning jobs and earnings also are widely used to attract enrollees and are frequently exaggerated, deceptive or false. (99) The deceptive use of such claims can take either of two forms: (1) the explicit misrepresentation of a school's attributes or policies; or (2) the omission of material information or qualifications concerning a school's claims.

(1) *Explicit Misrepresentations*

Among the most prevalent of such misrepresentations are exaggerated or false statements concerning a school's equipment and facilities;(100) the quality of instruction provided;(101) the availability of part-time employment opportunities during the course;(102) refund policy provisions;(103) and accreditation and government approval of courses. (104)

Two additional types of misrepresentations have a particularly serious impact on the prospective enrollee's ability to make a rational purchase decision. First, schools often dissuade students from reflecting on their decision to enroll by falsely claiming that rigid enrollment deadlines exist. Thus, many students forego the opportunity to verify the school's claims and seek outside counseling before signing a contract because they are deceived by the claim that they will lose their only chance to enroll if they postpone the decision. (105)

Second, schools have misrepresented the selectivity of their admissions process through false claims about the use of an admissions screening committee, the need to pass an aptitude or qualifications test, or the number of places available (and their restriction to highly qualified applicants.) In fact, the record demonstrates that few proprietary vocational schools apply any minimum admissions criteria aside from the student's age and that many schools randomly recruit and admit all enrollees who are willing to sign(106) a contract. (107)

False selectivity claims interfere with the consumer's ability to make a rational purchase decision in two ways. First, they can be used to negate applicable cooling-off periods under state and federal law(108) by causing the student to believe that his or her enrollment is not effective until he or she has been "accepted" by the school. By the time the student has been "accepted," the cooling-off period has lapsed. (109) Second, such claims are used to distort the customary roles of seller and buyer, so that the consumer must sell himself or herself to the school as being sufficiently qualified to meet the "selective" admissions criteria of the institution. (110)

(2) *Omissions of Material Information*

The record shows that many students are misled not only direct misrepresentations such as those described above, but also by the failure of the schools to disclose material facts. The most important of such deceptions-by-omission is the non-disclosure of drop-out rates. Virtually no schools currently disclose their drop-out rates to prospective students. (111) Moreover, the record shows that most proprietary vocational school students do not complete their courses. (112)

The significance of schools' drop-out rates is discussed in detail at Section B(5) below. Drop-out rates are directly relevant to schools' claims concerning placement performance and other purported success indicators. For example, a school which claims to have a 90% placement rate, but which fails to disclose that only 20% of its students graduate, seriously misleads enrollees concerning their chances of obtaining jobs.

4. *Commissioned Sales Representatives and Sales Techniques*

Commissioned sales personnel are widely used within the proprietary vocational school industry, and this marketing technique has been a major source of the unfair or deceptive acts and practices which led to the promulgation of the trade regulation rule. The abuses stem both from the nature of the sales force itself and from the methods the sales representatives employ in obtaining enrollments. This discussion focuses on the sales representatives and practices of the larger schools, which enroll the majority of all students. (113)

(a) *Characteristics of the Sales Force*

The record demonstrates that the widespread use of unfair solicitation and enrollment practices in this industry is closely related to the manner in which its salespeople are recruited, trained, compensated, and controlled.

(1) *Recruitment and Turnover*

The primary qualification sought by schools in recruiting salespeople is the individual's ability to sell. (114) Qualities such as personal character and experience in education or counseling are seldom part of the typical school's selection criteria. (115)

One reason for the random and continual recruitment engaged in by the larger schools is the exceedingly high turnover rate among salespeople at those schools. (116) Estimated to be as high as 70-90% annually at some schools, (117) the rapid turnover explains in part the remarkable uniformity of sales techniques used in the industry since sales representatives migrate from school to school. (118) The school's constant need for new recruits to replace the outgoing employees also contributes to the typical salesperson's lack of familiarity with the content of the educational package he or she is selling. (119)

The training of salespeople is oriented almost exclusively to selling techniques rather than to the substance of the courses offered, the school's actual graduation and placement record, or the nature of the occupations, for which training is sold. (120) As a result, the consumer's decision to enroll in a particular course and to enter a career field is often based solely on communications with an ill-informed sales agent whose only real expertise is in selling. (121)

(2) *Compensation and Supervision*

The compensation structure for commissioned sales forces also contributes significantly to sales abuses in this industry. The various compensation systems—payment by commission, bonuses, and sales contests—all have the effect of encouraging the enrollment of every prospect who can be induced to sign a contract. (122)

Although some schools' compensation systems provide for higher commissions the longer a student remains in school, the critical factor is that the agent benefits financially even if a student attends only one class or submits one correspondence lesson. On the other hand, if the salesperson fails to persuade the prospect to enroll, he or she is paid nothing for his or her efforts. (123)

In addition to monetary incentives, many schools enforce minimum sales quotas to boost enrollments. Under threat of losing both a job and accrued commissions from past sales, the agent is all the more likely to obtain enrollments indiscriminately. (124)

The net effect of such policies is to encourage salespersonnel to employ any means necessary to induce enrollments and to overcome consumers' natural hesitancy about making such expensive and long-term commitments. Misrepresentations, deceptions, and plainly fraudulent claims arise from the overriding drive to make sales which the schools' compensation structures necessitate. (125)

The commissioned sales system also encourages the enrollment of unqualified and unmotivated students—a factor that contributes to the high drop-out rate experienced by the industry. (126) Because salesmen are rewarded for merely obtaining downpayments and contract signatures, they have no incentive to screen out unqualified prospects and minimize potential drop-outs. (127)

Moreover, the record shows that schools have done little to prevent the abuses that arise from this compensation system. Indeed, the financial incentives of the supervisors responsible

for overseeing the actions of the sales forces actually encourage them to ignore unfair sales practices by their subordinates. Supervisors typically receive a fixed percentage of the tuition contracts sold by the sales agents in their employ. The manager's incentives are thus identical to those of the salesperson, since both benefit from every enrollment obtained, regardless of the methods used to obtain it. (*128*)

(3) *Selling Techniques*

The typical sale begins with the development of "leads," or the names of potential enrollees, by the school or the salesperson. Advertisements and direct mail literature which asks the consumer to call the school for further information are the most common sources of leads. (*129*)

The salesperson then arranges to meet with the prospective student, usually in the consumer's home. (*130*) At this initial stage of the interview, the record indicates that the salesperson may misrepresent himself or herself as a government representative, (*131*) an educational or guidance counselor, (*132*) or an admissions official who enforces rigid entrance standards for the school. (*133*)

One of the most common sales strategies used by large proprietary vocational schools is a technique known in the industry as the "negative sell." (*134*) The essence of this highly developed and successful sales tactic (*135*) is to reverse the roles of seller and buyer so that the consumer must prove his or her worth to the salesperson instead of the latter persuading the potential student of the school's merits.

The negative sell reinforces and capitalizes on the misrepresentation that the school's admissions program is highly selective and limited. (*136*) Bogus admissions and qualifications tests are frequently used by the salesperson not to eliminate unqualified applicants but to identify and exploit the consumer's insecurities as part of the sales presentation. (*137*)

A former salesman summarized the method as follows:

(W)e tried to find something negative about the prospect to put him on the defensive. Inevitably the prospect would then insist that the negative was not true and he would try to prove why he was worthy of being selected for the course. (*138*)

Another former sales agent described the desired result of negative sell:

At the end of a good sales pitch the prospect feels lucky to be getting into the school . . . that he had done well in the interview and for that reason alone, he was being recommended for admittance . . . In reality, of course, everyone was admitted. (*139*)

After the sale is consummated, various "post-sell" techniques are used to defeat the impact of cooling-off periods imposed by the FTC and numerous state laws. (*140*) The essence of the post-sell is to leave the consumer in suspense as to whether he or she has been "accepted" by the school until after the cooling-off period has expired. Some schools also train their sales agents to discourage consumers from discussing their enrollments with family, friends, or counselors until they learn whether the school has admitted them. (*141*) The post-sell thus effectively lulls the student into inactivity until it is too late to cancel the contract. (*142*)

The Commission has found, based on the record evidence, that the unfair and deceptive sales practices described above are pervasive and occur with considerable frequency, particularly among the major, nationwide schools which enroll a large proportion of all proprietary school students. (*143*)

(b) *Federal Monies As A Sales Tool*

The availability of Guaranteed Student Loans (GSLP) and veterans' benefits has had the unintended effect of facilitating many of the sales abuses described above. (*144*) The ready availability of such funds has been a boon to vocational school salespeople, since it reduces the consumer's resistance to expending his or her own funds for the training. Reluctant, unmotivated, and unqualified students who would otherwise be unlikely sales prospects are occasionally induced to enroll by the promise of long-term loans or outright grants from the federal government. (*145*) The deceptive implication that the agencies which provide the funds have endorsed the schools' programs has also on occasion been used to reassure doubtful enrollees; (*146*) indeed, the availability of federal subsidies has often been used as a prime selling point. (*147*)

The result of this infusion of federal monies has been to accelerate the indiscriminate enrollment of consumers who are unlikely to complete their course and find employment. The industry-wide phenomenon of high drop-out rates and low placement percentages is in part a reflection of these enrollment policies made possible by the availability of loan and grant monies. (*148*)

5. *Industry Drop Out Rates*

(a) *Timing of Withdrawal*

The record shows that a large majority of proprietary vocational school students do not complete their programs of study. The drop-out rate for the industry as a whole—including both home study and residence schools, whether accredited or non-accredited—is over 70%, according to several studies. (*149*)

Moreover, most studies understate the actual attrition rates because they fail to take account of enrollees who never attend a class or submit a correspondence lesson—the "non-starts." Under existing industry cancellation and refund policies, non-starts are financially obligated for some portions of their contracts, even though they do not begin their courses. (*150*) Their numbers are substantial: in one year, nearly 100,000 enrollees in accredited correspondence schools failed to begin their course. (*151*)

Most students drop out in the early stages of their courses. (*152*) One GAO study found that over 70% of all correspondent school enrollees dropped out of their courses. Of those who dropped out, over 30% withdrew during the first tenth of the course, over 67% within the first third, and 94% by the two-thirds mark. (*153*) The attrition rates of residence schools reflect similar early drop-out patterns. (*154*)

Students drop out for a variety of reasons, many of which are unrelated to the quality or sale practices of the schools. (*155*) However, the record contains substantial evidence that a major cause of non-completion is the industry's enrollment policies, coupled with the unfair and deceptive sales practices described above. (*156*)

(b) *Availability and Utility of Drop-Out Statistics.*

Although most schools maintain complete data on the number of students who fail to complete their courses, (*157*) such data is rarely made available to prospective students. (*158*)

The Commission is in agreement with the numerous federal and state agencies, educators, counselors, and other experts who believe that drop-out statistics are relevant and material to prospective students' enrollment decisions. (*159*) Consumers need such information particularly in light of the fact that schools' pre-enrollment practices have been shown to be related to their ability to retain students. (*160*) Information concerning a school's graduation rate will not necessarily enable a student to conclusively ascertain his or her chances of completing a course, although it will serve to alert students to the need to inquire further into the issue. However, this information will enable students to make a better comparison of competing programs offered by various institutions within the proprietary vocational school sector. (*161*)

6. *Refund Policies.*

(a) *Existing Standards.*

The cancellation and refund policies by which schools calculate the drop-out's financial obligation currently vary widely and derive from a number of sources.

Although 44 states had mandated some form of refund policy standards as of January, 1975, most of the state-mandated refunds are patterned after

those adopted by the vocational school industry accrediting associations. (*162*) The accrediting associations have established minimum refund standards for their member schools. The policies established by the four major accrediting organizations (*163*) are similar in their approach and generally observe the following format: the student is obligated only for an enrollment fee (usually a percentage of the contract not to exceed $100) if he or she withdraws prior to the commencement of the course; the obligation is for 25% of the contract price if the student withdraws during the first quarter; 50% during the second quarter; and for the total contract price after half of the course has been completed. (*164*)

Two federal agencies—the Veteran's Administration and the U.S. Office of Education (USOE)—also require adherence to minimum refund standards for participation in their respective financial aid programs. Congress established the veteran's program standards, which adopt the industry association's policy for veterans enrolled in correspondence courses, and pro rata refunds for unaccredited residence school students (no refund standards have been enunciated for veterans attending accredited residence schools). (*165*)

USOE's regulations for accredited schools participating in its Guaranteed Student Loan Program (GSLP) do not mandate specific refund provisions, but require that they be "fair and equitable." (*166*)

(b) *Cancelling the Enrollment Agreement.*

The enrollment cancellation procedures specified in school refund policies significantly affect the actual amount returned to the student. The requirements of the state and federal agencies and the accrediting associations vary considerably, although most provide for written disclosure to the student of the school's cancellation policy and procedures, and require that the student provide written notice of his or her intention to withdraw. (*167*)

The various agencies' requirements for determining the effective date of cancellation are largely unstandardized. (*168*) A few states and two of the accrediting associations prescribe maximum time periods within which schools must provide refunds (usually 30 days); USOE requires refunds to be made within 40 days of the student's withdrawal. (*169*)

In addition to the unstandardized and often inadequate protection afforded students under the various agencies' refunds and cancellation standards, the record shows that enforcement of those standards is frequently ineffective. (*170*) A 1975 USOE study, for example, revealed extensive violations of industry accreditation standards, which appear to be the results of inadequate policing by the responsible agencies. (*171*)

(c) *Costs of Existing Refund Policies.*

The various cancellation and refund policies described above have resulted in large financial losses and attendant harsh consequences for students. (*172*)

Present refund structures do not adequately suffice to discourage abusive sales practices in this industry, since it is still profitable for schools to indiscriminately enroll large numbers of potential drop-outs—often through the use of deceptions and misrepresentations—rather than select only qualified enrollees and then provide the training their sales presentations promise. (*173*)

7. *Student Placement Success.*

The success of proprietary vocational school students in obtaining jobs was a central issue in this proceeding, because a primary reason for the industry's existence is to prepare students for obtaining employment in a field related to their training. The importance of job placement performance is magnified by the schools' sales representations regarding jobs and earnings, which were discussed in section B(3) above.

The record evidence concerning placement supports the conclusions outlined below.

1. In the market as it currently operates, the prospective student usually has no way of knowing whether the course he or she is considering will enable him or her to get a job. Few schools currently disclose accurate data reflecting their former students' success in obtaining jobs. (*174*) The information on which prospective enrollees rely in assessing their prospects for obtaining employment is often inaccurate and frequently consists of misleading or ambiguous claims made by the schools as part of their sales efforts. (*175*)

2. Schools, despite their advertised claims, often do not know whether their training will enable enrollees to obtain jobs. (*176*) Although recent VA regulations now require many schools to maintain placement data, the record shows that the industry as a whole has not in the past attempted to measure its performance in terms of placement statistics. (*177*) In fact, the record shows that many of those schools which have relied most heavily on job and earnings claims in their sales presentations have had little actual knowledge of their students' employment experiences after graduation. (*178*)

3. Many graduates do not get jobs related to their training; of those who do find employment, a significant number do not obtain the positions they had expected. (*179*)

An extensive study conducted in 1974 found that fewer than 20% of proprietary school graduates who took professional or technical level training obtained jobs in those fields. (*180*) The remainder either took lower-paying, unrelated jobs or were unemployed. On the other hand, according to the study, 60% of those who graduated from less technical, clerical, or service workers programs obtained jobs related to their training.

Other studies in the record confirm that a majority of all proprietary vocational school graduates fail to obtain jobs related to their training. (*181*) When considered in light of the fact that most enrollees never graduate, (*182*) the conclusion which emerges from the record is that only a fraction of prospective students can expect to achieve the employment objective on which they base their enrollment decisions. (*183*)

The record suggests that the reasons behing the low placement rates are varied, the primary factors appear to be the following: (1) low job market demand for vocational school graduates, particularly in highly technical, skilled, or unionized fields; (*184*) (2) inadequacy of schools' training as preparation for certain occupations; (*185*) (3) insufficient school placement services; (*186*) and (4) the enrollment of unqualified students who are unempolyable in the fields for which they were trained by virtue of age, physical limitations, or other personal factors. (*187*)

4. Although the overall placement performance in the industry is low, the employment rates of individual schools vary considerably, with certain schools and occupational programs enjoying highly successful records. (*188*) However, the lack of comparative placement statistics and the existence of misleading job and earnings claims prevents prospective students from identifying those schools and programs which are most likely to lead to employment. (*189*) While a properly functioning market would be expected to provide such information, with which consumers could make rational purchase decisions, the record demonstrates that the proprietary school market has failed in this respect. (*190*)

8. *Inadequacy of Existing Regulation.*

Numerous regulatory entities at the state, federal, and private levels have direct or indirect responsibility for supervising the proprietary vocational school industry. (*191*) However, the Commission has determined—based on its review of the record evidence concerning the responsibilities, jurisdiction, and effectiveness of each of these entities—that the existing regulatory framework is inadequate to curtail the abuses outlined in this Statement.

(a) *State Regulation.*

The primary source of supervision and review of proprietary schools occurs at the state level. (*192*) Most states require individual schools to be licensed and prescribe certain standards as prerequisites to licensure. (*193*) While the statutory criteria vary considerably from state to state, their primary objective is to insure that schools meet minimum standards for course content, facilities, libraries, instructors' credentials, records maintenance, ownership and management control. (*194*)

Although some State statutes and regulations contain separate standards for business practices such as advertising, enrollment techniques, sales, refunds, and disclosures, (*195*) they nonetheless are concerned primarily with the States' more traditional interest—the quality of the education being offered. (*196*)

The record also documents a prevailing lack of sufficient enforcement of those consumer protection standards which do exist at the State level. (*197*) School licensing officials and consumer protection personnel representing numerous States testified that they have neither the manpower nor the budget resources to cope effectively with the abuses engaged in by schools within their jurisdictions. (*198*) Other evidence, (*199*) including the continued prevalence of unfair business practices engaged in by schoools throughout the country, (*200*) points to the conclusion that State regulation of this industry is inadequate.

Finally, even improved State enforcement capabilities could not cure the significant portion of industry abuses which are interstate in character. The operations of large multi-State schools are beyond the capacity of the individual States to control. (*201*)

(B) *Federal Regulation.*

The Federal Government's involvement in proprietary school education derives from the many Federal subsidy and grant programs operated by various departments and agencies. (*202*) Precluded by statute from engaging in direct evaluation of or control over the individual schools, (*203*) Federal agencies generally have been confined to supervising the fiscal and procedural aspects of their programs. (*204*) They have deferred to other non-Federal (or non-governmental) entities to exercise direct control over the schools' educational quality and sales practices. (*205*) For The approval of schools eligible for the veterans' benefits program, the VA is required to defer to State agencies, (*206*) while USOE relies primarily on private accrediting agencies. (*207*)

The Federal agencies have acknowledged the regulatory weaknesses inherent in this system of indirect review, which has frustrated their efforts to curb abuses which are directly related to the infusion of Federal money into the proprietary school industry. (*208*) As was noted above, (*209*) the availability of VA subsidies and USOE guarantees of student loans made by financial institutions and by the schools themselves has been widely used by school sales forces to induce the enrollment of millions of students. (*210*)

In addition to their use as sales tools in deceptive and unfair marketing practices, the Federal programs have contributed indirectly to diminished industry performance by distorting normal market forces. That is, the schools' incentive to compete effectively by providing the education and employment opportunities their sales efforts promise has been significantly reduced by guaranteed Federal subsidies, which all too often have had the effect of rewarding schools indiscriminately, regardless of their performance. (*211*)

Congress and both of the agencies have recently acted to curtail such problems by instituting certain Federal standards for school participation in the programs. (*212*) The primary determination as to school eligibility still rests with the State agencies and accrediting assocations, however, so that these initiatives may suffer from similar infirmities. (*213*) Indeed, a VA representative testified to the Commission that more restrictive requirements for maintaining VA eligibility have caused many schools to withdraw from the program, thus removing themselves from VA oversight. (*213a*)

The Commission believes that the Trade Regulation Rule, with its provisions for direct consumer relief supported by the Commission's enforcement capacity, will provide remedies which are beyond the scope of those embodied in the VA and USOE programs. The recently implemented regulations of those agencies, augmented by the Rule's requirements, are expected to provide the full scope of relief needed to curtail existing abuses on an industry-wide basis.

(c) *Accreditation.*

The four major accrediting organizations described in this Statement operate through a voluntary peer-review process. The essence of the accreditation process is an initial self-evaluation by each school, and subsequent peer group efforts to assist the accredited schools in achieving prescribed standards over a period of several years. (*214*)

By their own admission, the accrediting organizations are neither designed nor equipped for regulatory or enforcement functions in consumer protection matters. (*215*) Because their primary function is to achieve long-range improvement in educational performance among accredited schools, they cannot effectively police the industry's business practices or enforce compliance with consumer protection standards. (*216*) While improved educational quality is an important objective, so too is the goal of insuring that students are not misled into expecting benefits that cannot or will not be delivered. That is particularly true where the services offered relate to such a critical economic function as job training.

C. *Legal Basis for the Rule.*

1. *Prevalence of Unfair or Deceptive Acts or Practices.*

In section B of this statement, the Commission delineated many of the unfair and deceptive advertising, sales and enrollment practices upon which the need for this rule is predicated. Many of the practices which violate Section 5 of the FTC Act are almost uniformly used. For example, the use of generalized jobs and earnings claims without the necessary qualifications on those data and the failure to disclose material information concerning placement and graduation rates is comparatively uniform, particularly among the larger institutions which enroll the majority of students. Similarly, the majority of vocational school students are enrolled after contact with a commissioned sales person in which deceptive representations are frequently used or the indiscriminate enrollment policies attending the use of the "negative sell" sales policy are present.

Other practices found to be deceptive or unfair, including many specific misrepresentations such as help-wanted advertising, sales personnel referring to themselves as guidance or enrollment counselors, misstatements of graduation or placement rates, etc., are also frequently used, as indicated.

Considerable attention was directed by industry groups to the issue of the volume of consumer complaints concerning vocational education which would support the promulgation of a trade regulation rule. Numerous schools and their trade associations argued that the number of valid consumer complaints concerning the practices of proprietary vocational schools was *de minimis* when compared with the total enrollments of the schools. (*217*) In both the Staff Report as well as the final comments of the industry members, there were lengthy discussions addressing the extent to which reported consumer complaints represented either the "tip of the iceberg", or, rather, the entire iceberg of consumer dissatisfaction. (*218*)

While consumer complaints are one measure of the existence of a problem in an industry, they are not the sole measure of the prevalence of practices

which violate Section 5 of the FTC Act. The measure of consumer dissatisfaction as actually expressed through consumer complaints is but one aspect of the determination of whether practices violative of Section 5 are "prevalent." Equally relevant are the opinions of experts in the field; documentary evidence such as enrollment contracts, advertisements, and promotional materials; the testimony of present and former school owners and sales personnel; studies and investigations performed by state and federal governmental agencies; newspaper investigations and exposes; and the Commission's own prior experiences in regulating the advertising, sales and enrollment practices of proprietary vocational schools through individual cease and desist orders. In sum the issue of prevalence requires the Commission to examine all of the materials in the record. Moreover, the issue of prevalence involves an examination of both the number of schools engaging in practices violative of Section 5 and the number of students affected by the practices.

Given the multiplicity of students and schools involved in this industry and the millions of individual school-student contacts which occur, it is extraordinarily difficult, and probably impossible, to make any precise quantitative assessment of the frequency of the practices at issue. Despite the fact that the prevalence of the practices has been an issue in this proceeding since the outset neither the Commission's staff nor other interested parties have been able to precisely quantify the extent of abuse although occasional studies have attempted to test empirically the level of these practices. Nevertheless, prior Commission involvement with proprietary vocational schools clearly demonstrates the continuing nature of the problem in the industry. In 1972 the Commission published guides for proprietary vocational schools, voluntary in nature, specifically delineating practices which the Commission believed violated Section 5. (*219*) Yet, since 1972, the Commission has issued 22 complaints or consent decrees involving industry schools, (*220*) indicating that it had reason to believe violations of § 5 had been committed. While the Commission would prefer harder numbers on the question, the issue of prevalence does not lend itself to precise quantification. On the basis of the record here, the Commission is convinced that large, though not precisely ascertainable, numbers of students are affected by these practices, and that this number represents a significant number of all school-student interactions. The record information is sufficient to convince us that action to protect the vocational school consumer is justified.

2. *Scope of Coverage of the Rule.*

(a) *Courses Covered by the Rule.*

The scope of the rule adopted by the Commission is detemined mainly by the definition of "course" and specific exemptions under that term. If a program of instruction "purports to prepare or qualify individuals, or improve or upgrade the skills individuals need for employment in any specific occupation * * *" then it is a "course" which is covered by the rule.

Many courses, such as heavy equipment operation, secretarial skills or computer programming are, by their very nature, programs which purport to prepare individuals for employment. Other programs may or may not be "courses" depending upon how they are marketed. Thus, a program of study which is purported to be for the sole purpose of preparing a person to pass an exam for a professional license would not be covered by the rule. However, if express or implied claims about the availability of jobs or earnings are made in connection with marketing the program, or about training for the profession, then it is covered by the rule. As an example, schools which offer programs for preparing to take civil service exams would not be covered by the rule unless they represented the availability of government jobs or made any other express or implied references to salaries, security, or other benefits of government employment.

Similarly, while self-improvement courses are specifically excluded from the rule's coverage, some courses which would otherwise qualify as self-improvement programs would be covered if they were marketed in a manner which created the expectation of employment. For example, a charm school otherwise exempt from rule would be covered by it if advertising for the school led persons to believe that graduates could enter the modeling profession.

It is important to note here the distinction between representations which would place courses within the scope of the rule's coverage and those jobs or earnings claims which trigger the placement record disclosures required by Section 438.3 of the rule. The latter are limited to express claims of a general or specific nature about employment or earnings. No such limitation attaches to the former. Thus, the claim "Be a model" would not trigger the placement disclosure requirement of Section 438.3(b), (*223*) but a school making that claim would have to comply with the other requirements of the rule.

(b) *Exclusion of Not-for-Profit, Public and "Degree" Course.*

The Commission has limited the coverage of this rule to include only proprietary institutions. Excluded from the rule are not-for-profit institutions and publicly supported community colleges and vocational institutions. (*222*) Members of the proprietary sector have contended that the failure of the rule to cover community colleges and other public institutions will place the proprietary institutions in an adverse competitive position. (*223*) They have contended that the mandatory release of graduation and placement information by proprietary vocational schools, without a similar obligation for public institutions, will deprive consumers of the ability to meaningfully compare the track records of the two different types of institutions. (*224*)

There is evidence in the record to show that some public vocational schools and community colleges have engaged in questionable advertising and enrollment practices. (*225*) However, whereas the use of generalized jobs and earnings claims by proprietary schools as well as the use of commissioned sales personnel by those same institutions has been the rule, the use of similar methods by public institutions has not been shown in the record to be pervasive.

Moreover, alternative means exist to control the practices of public institutions. Public institutions are run by public officials who are more directly accountable to the public. Furthermore, the existence of public funding reduces the economic incentive for public schools to engage in deceptive practices. In addition, other factors such as course cost and structure differentiate public from proprietary schools. (*226*) In view of these factors and the evidence of record concerning deceptive practices, the Commission does not believe that extension of this rule to cover public sector schools is warranted. (*227*)

One significant exemption from the coverage is included within the rule. Section 438.1(c) of the rule exempts from the rule's coverage programs two years in length or longer which consist of accredited college level instruction which culminates in a standard college level degree as defined in 38 U.S.C. Section 1652(g).

To be exempt from the requirements of the rule, a program or instruction must culminate in a standard college degree, in most cases an Associate Degree or better. The Commission believes that this exemption may raise one potential problem. The Commission intends for this exemption to apply only to students who are genuinely pursuing the degree objective. It may be that some institutions which offer both degree and non-degree programs may offer some courses which

can be taken by either degree or non-degree students. If the records of institutions offering both types of programs demonstrate that students are invariably being enrolled "in the degree program," and are subsequently dropping out of the degree program as soon as they conclude a course, the Commission may consider amending the rule to deal with this situation. The Commission will monitor this situation to determine whether a problem is developing.

3. *Cooling-Off Rights.*

In Section 438.2 of the rule, the Commission has adopted a cooling-off requirement on all vocational school enrollment contracts, whether entered into at the school, the home of the prospective student, or entirely through the mails. In 1974 the Commission adopted a cooling-off rule on door-to-door sales (*228*) which applied to vocational school enrollment contracts entered into away from the place of business of the seller. (*229*) However, in its present form, the Commission's cooling-off rule has proved ineffective to accomplish the goals for which it was intended in the vocational school market.

(a) *Attempts to Negate the Intended Effect of the Rule.*

In the past, schools have used several methods to negate the effect of the cooling-off requirement. The most prevalent of these practices involved the schools' informing prospective students, typically through their sales representatives or sales materials that, at the time the student signed the enrollment contract, no contract existed. Rather, the schools impressed upon the students that a contract would only exist if the "home office" accepted the enrollment application of the student. (*230*) Thus, the enrollment contract was, in the mind of the student, reduced to an application to the school. However, the three day cooling-off rule begins to run as of the date when the student signs the enrollment contract.

The evidence in the record, including the testimony of state officials, investigative reporters and counsel for the trade associations, demonstrates that the practice of informing students that their enrollment contracts are not binding until accepted is very widespread. (*231*)

The process of "acceptance" is frequently coupled with affimative misrepresentations designed to lull the prospective student into inaction. For example, sales manuals of some of the largest accredited home study schools direct their sales agents to make statements to students urging them not to discuss their enrollment contracts with friends or family, ostensibly because of the possibility that the student will not be "accepted" by the school. (*232*)

The evidence in the record does not support a finding that industry schools engage in such selective screening processes. (*233*) The Commission finds that the act of deceiving students into not exercising their cooling-off rights by the making of false statements concerning selectivity of enrollment practices violates Section 5 of the FTC Act.

However, even in those cases where the school has not engaged in any affirmative misrepresentation, the Commission finds that there is a need to modify the existing cooling-off requirements. Although there may be legitimate business reasons for a school's desire to review and "accept" enrollment contracts at the home offices of the school—e.g., to screen enrollment contracts or to control the law used to interpret the enrollment contract by controlling the location of the act of "acceptance"—nonetheless, the intended protections of existing cooling-off laws are being effectively negated. (*234*)

The final rule recommended by the Commission's staff in the Staff Report, included a provision for an affirmation period, in lieu of the cooling-off period, to rectify the practices used to circumvent the intended effect of the cooling-off period. (*235*) Congress has mandated the use of an affirmation period in connection with the enrollment contracts of veterans and others eligible for veterans benefits in correspondence courses. (*236*) Industry groups were extremely critical of the staff's proposal to extend the reaffirmation requirement from the present VA requirement to one which would encompass all students. Many schools contended that a mandatory reaffirmation requirement would be inappropriate without clear proof that a less-intrusive remedy, such as cooling-off, was unworkable. (*237*) Indeed, many commenters affirmatively advocated an extension of the length of the cooling-off period as a vehicle to remedy the abuses of the current cooling-off rule (*238*).

The Commission has concluded that the concept of cooling-off should not be abandoned in favor of reaffirmation at this time. However, the Commission does believe that a number of minor adjustments are necessary to make the cooling-off period effective.

The major change being made concerns the trigger for the commencement of the cooling-off period. Under the rule adopted by the Commission, all schools are required to disclose to prospective students who sign enrollment contracts, the school's graduation rate. To ensure that students have adequate opportunity to reflect upon these data, and to eliminate the adverse effects of the "acceptance" process, the rule states that the cooling-off period does not commence until the school has accepted the student's enrollment contract, and mails to the student the required disclosure. (*239*) This ensures that the legitimate business purposes of the schools' use of the "acceptance" process are maintained. Under the Commission's rule, schools remain free to screen incoming enrollment applications, and to control the forum law applied to the contract. However, the rule similarly ensures that the student will be informed that he or she has been accepted by the school, (*240*) and precisely when the cooling-off period expires. (*241*)

The rule requires two notices to be used to explain the cooling-off period to prospective students. The first notice appears in the enrollment contract and explains to the student his or her right to cancel the contract, (*242*) and how the school will settle the student's financial obligations to the school in the event of cancellation. To provide greater assurance that the cooling-off disclosures are meaningful and not undermined by other representations, the rule requires, as noted above, that after the school has accepted the student's enrollment contract, it mail to the student a notice that informs the student of his or her acceptance, and which specifically states the last day on which the student can cancel the contract.

(b) *Other modifications.*

The Commission has made two additional changes in the cooling-off rule applicable to vocational school enrollment contracts. First, the cooling-off provisions of this rule will apply to *all* vocational school enrollment contracts, whether entered into in the home of the consumer, at the educational institution, or entirely through the mails. The evidence in the record supports a finding that enrollment personnel in the schools frequently operate under the same compensation and incentive schemes as commissioned sales personnel. (*243*)

Thus, the cooling-off provision of the rule, Section 438.2, expands the scope of coverage heretofore provided by the FTC's rule on door-to-door sales in order to eliminate undue pressure and deceptions which may occur either at the school or through mailed materials.

Second, the length of the cooling-off period has been extended. A number of schools advocated extending the cooling-off period applicable to vocational school enrollment contracts as a viable substitute for an affirmation period. (*244*) The Commission's decision to extend the cooling-off period to fourteen days, beginning on the date of mailing of the notice, will serve

to ensure, in the majority of cases, that a prospective student has at least ten days to consider the school's disclosures, as well as his or her decision to enroll in the school. Congress has implemented a similar time period in the case of its veteran reaffirmation requirement. Under the VA requirement, a veteran *cannot* reaffirm his or her contract prior to the tenth day after the enrollment contract was signed. (*245*)

(c) *The Disclosure Forms.*

We noted earlier that two notices are required by the rule to inform prospective students of their cooling-off rights under the rule. It is the Commission's intention, in requiring that enrollment contracts include the required explanation of the cooling-off rights, that individual students be able to privately enforce any failure by schools to comply with those rights.

The forms recommended by the Commission's staff in the Staff Report were severely criticized by industry groups for being excessively negative in tone, and, in the words of the industry groups, for suggesting to students that they drop out. (*246*) To address these concerns the Commission has rewritten the explanation of the student's cooling-off rights—to cast the language in a fashion which will inform the student, in understandable terms, of his or her rights, but which is not suggestive of any particular course of actions, and which also maintains a tone which will impress upon the student the importance of a contract. (*247*)

4. *Disclosure of Graduation and Placement Rates.*

In Section 438.3 of the rule, the Commission has required that all schools disclose to prospective students the school's graduation rate. That section also requires that any school which makes an express job or earnings claim disclose to its prospective students the information which the school knows about the success of its students in obtaining employment after graduation.

(a) *Graduation and Drop-Out Disclosures.*

The rule requires, in Section 438.3(a), that all schools disclose to students who sign enrollment contracts the current graduation rate of the institution for the particular course in which the student has enrolled. This requirement is imposed even if the school makes no affirmative representations concerning its graduation rate.

The record in this proceeding shows that some schools have affirmatively misrepresented their graduation rates when asked by prospective students, (*248*) and that most commissioned sales personnel do not know what the graduation rates are for particular courses. (*249*) While the record does *not* support a finding that all schools are affirmatively misrepresenting their graduation records, it does show that most schools do not disclose graduation rates to prospective students. (*250*) The requirement that all schools disclose their graduation rates for each course will effectively eliminate deception in this area.

The record also shows that misrepresentations concerning the placement success of schools occur frequently, (*251*) although their use is certainly not uniform in the industry. Even in those instances where the school does accurately inform a prospective student of the school's placement record, the prospective student may nonetheless be seriously misled if graduation data are not also provided. For example, if a school enrolls 1,000 students, graduates 900 of them, and 70% of them are able to find jobs, a prospective student could deduce that job prospects in the industry were bright. However, if a school enrolled 1,000 students, graduated 90, and 70% were able to find jobs, quite a different picture of demand in that job market emerges. The Commission finds that the disclosure of graduation rate information is essential to evaluate claims of placement success.

Additionally, the record shows that sales personnel enroll many students who are not qualified or have no real interest in the course. (*252*) By their terms, the commission schemes currently in use in this industry reward sales personnel for enrolling as many prospects as possible. (*253*) By requiring schools to disclose their graduation rates, schools whose sales personnel engage in indiscriminate enrollment practices will be encouraged to remedy those practices or face the burden of explaining a very high drop-out rate to an applicant.

The Commission has determined that the graduation rate of an institution, on a course-by-course basis, is information which is material to the vocational school transaction, (*254*) necessary to make the transaction as a whole non-deceptive, and is a reasonable requirement imposed to prevent the other unfair and deceptive practices identified in this section.

Another line of analysis also supports this requirement. It is a basic tenet of our economic system that information in the hands of consumers facilitates rational purchase decisions; and, moreover, is an absolute necessity for efficient functioning of the economy. If consumers have access to good information on the facts significant to their purchase decisions, then the normal forces of the market are likely to induce sellers to improve those characteristics of the product or service that are most important to the consumer. In the case of vocational schools, one of the most important items of consumer information, the graduation rate, is not available. Moreover, consumer search costs are so high that there is no realistic way in which any significant number of consumers can become aware of this information. Nor is there any way in which independent third-parties will find it worthwhile to provide good information on a continuing basis since graduation rate data are not available to them. The decision to enroll in a vocational school is one involving a large expenditure, with serious consequences on the future welfare of the student. The evidence shows that the majority of students enrolling in vocational school courses are either unemployed, or if employed, occupy low paying positions. (*255*) If students must enroll in a course to determine whether they will likely be able to graduate, a painful form of search cost is exacted from the student. At the same time, the relevant information is known to each school in the ordinary course of its business. There is no way in which a school could not know its drop-out rate, and requiring that the graduation rate be disclosed imposes no extra costs on the school except a *de minimis* cost of preparing the information in tabular form and disclosing it to prosective students. Under such circumstances, we think it is reasonable and necessary to require schools to disclose this information.

Industry opposition to a requirement that schools disclose graduation rates has focused on two primary issues. First, schools have contended that a knowledge of graduation rates is not material to the vocational school purchase decision. (*256*) As noted above, the Commission rejects this argument. Both in terms of negating specific misrepresentations of graduation and placement information, as well as providing a key piece of information for students to assess the likelihood of their completing a course, graduation rate information is material.

The second basis on which schools have contested the mandatory disclosure of graduation information is the potential that exists for misinterpreting this piece of data. Schools have argued that students drop out of courses for numerous reasons unrelated to the quality of the course or the sales or enrollment practices of the school, such as pregnancy, financial difficulties or simple disinterest. (*257*) The Presiding Officer expressed similar concern over the possible interpretations of a low graduation rate. (*258*) For example, a low graduation rate may reflect an extremely difficult course of study which only the best students are able to complete, or it

may reflect a high level of deception in the enrollment process which causes many students to subsequently withdraw.

The Commission recognizes that the graduation rate of a school is not a perfect piece of information. However, it is a vital starting point in informing the prospective student of a material factor to be considered in the decision to enroll in a course. The rule does not prohibit schools from explaining to prospective students the reasons why students have withdrawn from a particular course. In its advertising, sales presentations, brochures, mailings or other contacts with prospective students, a school is wholly free to discuss with the prospective student the causes for withdrawal.

The only limitation on qualifying information is placed on the disclosure form, itself. The school cannot include any additional information on the disclosure form beyond what is required or specifically permitted by the rule.

It is important to understand what these restrictions do *not* do. They do not prevent the school from showing students the Disclosure Form before they sign the enrollment contract and explaining at that time the reasons for drop-outs or comparing the school's own rate with those of other schools. Nor do they prevent the school from separately mailing to students additional information about drop-outs before or after the contract is signed. Thus schools have every reasonable opportunity to explain and analyze their drop-out rates.

Some schools argued that drop-out disclosures, with out a listing of reasons for dropping out, was inappropriate, and suggested that the Rule should require disclosures of the reasons students fail to complete. (*259*) In response to this industry concern, the Commission has provided for an optional explanatory statement to be incorporated into the graduation record disclosure form. (*260*)

In evaluating these figures, you should know that students may drop-out of a course for a variety of reasons. They range from dissatisfaction with the course to inability to do the work. Other students drop-out of school for personal reasons, such as poor health.

Thus schools, if they wish, can include in the disclosure form itself a general explanation as to what may motivate drop-outs.

Finally, some schools have argued that the adoption of the Educational Amendments of 1976 by Congress (*261*) has eliminated the need for the Commission to mandate the disclosure of graduation rates because this legislation provides for essentially the same thing. Three important limitations on availability of the information under the regulations implementing this legislation make this alternative inadequate. First, under the regulations adopted by the Office of Education, graduation data need only be disclosed on request. (*262*) Given the pressure surrounding the enrollment process and the characteristics of the vocational school population, it is questionable how many students will affirmatively seek out this information. Second, schools are permitted to charge a fee for providing the information to persons who request it. Third, only schools which receive federal assistance or participate in federal assistance programs are forced to comply with this regulation. (*263*) The Commission believes that the affirmative disclosure of this information is warranted, especially in view of the minimal burdens associated with gathering it. (*264*)

(b) *Placement Rate Disclosure.*

In Section 438.3(b) of the rule, the Commission has required schools to disclose to their prospective students information concerning the placement rate of the school, if the school has made any express claims concerning jobs or earnings in marketing the course. The record clearly shows that most students enroll in proprietary vocational school courses for the purpose of obtaining new or better employment in the field of training. (*265*) The predominant theme in the advertising employed by proprietary vocational schools likewise stresses the theme of job availability. (*266*)

The record demonstrates that a significant percentage of graduates of proprietary vocational school courses do *not* obtain employment in the field of their training. (*267*) While the overall placement picture is poor, there are wide variations among schools and courses as to placement success. (*268*) The decision as to which career to enter, and what type of training to pursue to accomplish that career objective, is a difficult and complicated one involving considerations of demand, regional variations, students' qualifications, the quality of training, school reputation and employer hiring practices. (*269*) The evidence from the record is clear that schools have not been voluntarily disclosing to their prospective students their relative success records. In many cases, placement records have been affirmatively misrepresented. This includes specific claims of non-existent placement services. (*270*)

Far more widespread is the use of generalized claims about job demand or salaries in an industry. (*271*) Consumers often understand such general claims to be assurances that they will have little difficulty obtaining jobs upon graduation, because they are not informed that general demand for a job does not translate into a predictor of the value of a course or the success of any particular school's graduates. Furthermore, the educational and training prerequisites which often accompany job projections in documents such as the "Occupational Outlook Handbook" published by the Department of Labor, are uniformly not disclosed by schools in their advertisements. (*272*)

The importance of placement data describing the school's track-record is so compelling that the disclosure of this information could be justified for all schools, regardless of whether they make job or earnings claims. (*273*) However, as we discuss below in section C(8) of this statement, a cost is imposed on schools to collect and disclose placement information. In balancing the benefits of disclosing placement information against the burdens placed on schools by such a requirement, the Commission has opted against an across-the-board requirement. Instead, the rule requires that placement information be disclosed to prospective students only when the school makes the issue of jobs and earnings material to the enrollment decision, by making advertising claims in that area.

Far from being a novel remedy, the rule's placement disclosure simply builds on the requirements of the *Pfizer* doctrine. (*274*) In *Pfizer* the Commission held that it was an unfair act or practice for an advertiser to make a claim for which the advertiser did not have substantiation at the time the claim was made. (*275*) In the context of this rule, the Commission has ruled that, prospectively, the placement track-record of a school in one piece of the information necessary in every case to substantiate job and earnings claims (in some instances additional substantiation is required as well), and that this information must be disclosed to the prospective student. Given the almost uniform failure of schools to disclose the limitations placed on the use of generalized jobs and earnings projections, and the widespread use of false or deceptive specific jobs and earnings claims, the Commission believes that disclosure of the track-record of the school's graduates is necessary to negate the deceptive character of these claims.

Thus, the reasoning supporting this requirement is analogous to that supporting the requirement of disclosure of graduation rates. The placement record of a school is one of the most important tools for a prospective student to use in choosing a vocational school course; yet, prohibitive costs are imposed on consumers who may wish to evaluate express job and earnings claims in light of a school's actual placement experience. Unlike gradua-

tion information, however, schools will usually have to incur the costs of surveying their graduates to obtain placement and earnings data. Schools can avoid these costs entirely, at their own option, simply by refraining from making express job and earnings claims in marketing their courses. To the extent that a school chooses to make express job or earnings claims, the evidence shows that the costs of collecting the required information are minimal.

As in the case of graduation rate disclosure, schools are in a far superior position to individual consumers to obtain and disseminate this information. The aggregate costs to the schools of gathering and providing these data are substantially less than would be the aggregate of costs to consumers to individually search for this information.

To ensure that the purposes of the rule's placement disclosures are carried out, the rule mandates a uniform format for the disclosures. Uniformity in the disclosure format is necessary to ensure that comparison shopping is possible and that the percentages of graduates obtaining employment are calculated in identical fashion by all schools.

The disclosure required by the rule is a simple one. The school must disclose to prospective students the number of students who graduated from the course and the number and percentage of those graduates who were able to find employment within four months after leaving the course. (*276*) The school must also disclose the salary levels being earned by students obtaining employment. (*277*) The disclosure itself does not purport to be the school's complete placement rate, but rather is designed to disclose to the prospective student what the school *knows* about the success of its graduates.

In the form recommended by the Commission staff, the placement rates of schools would have been required to be calculated as a percentage of all the students who enrolled in a course. For example, if a school enrolled 1,000 students, graduated 100, and placed 50, under the staff's formula the school would have been required to disclose that 5% of those who enrolled found jobs. Many schools objected to this requirement on the grounds that dropouts should not be included in any calculation of placement rates. (*278*) While the Commission believes that the percentage of all enrollees who ultimately obtain employment may be informative to prospective students, the Commission has determined that only the percentage of graduates obtaining employment is required to remedy the deceptive use of both general and specific job and earnings claims. To the extent that a student may wish to determine the placement rate as a percentage of all enrollees, sufficient data is contained in the disclosure form to permit the student to make that calculation.

Some schools would have further refined the figure to exclude students who "were unavailable for employment" or who could not be contacted by the school to ascertain whether they were able to find employment. (*279*) The Commission has decided not to allow these categories of graduates to be excluded from the placement rate computation. The term "unavailable for employment" is difficult to define and would create significant enforcement difficulties. For example, if a student joins the military or becomes pregnant after completing a course, the motivating factor behind the decision to enlist or have a child may have been the inability of the graduate to obtain employment and remain in the job market. Any exclusion for this category of students which lacked absolute precision could result in schools making and disclosing non-comparable data.

However, the Commission recognizes that by not excluding these categories of graduates, the placement percentages of the school may be adversely affected. To mitigate this, the Commission specifically permits schools to provide an optional paragraph within the placement record disclosure which explains how factors such as non-respondents and non-career goals affect the percentages: (*280*)

In evaluating our record, remember not all our students took this course to get a job in the field of ————. Also, we were unable to reach some of our graduates to see if they got jobs. So, our placement percentage might be understated.

Of course, schools should include the second sentence of the statement only if they were unable to obtain responses from all of their graduates. (Or in the event that all of the students in a course did enroll to obtain jobs the first sentence should not be used.)

A number of schools also objected to the limitation that a student must obtain employment within four months after graduating to be counted as a placement. (*281*) The Commission believes that this time period is a reasonable one. Although some students may find employment after this time period, this number will be offset by persons who took a job in the field of training and have subsequently left (after four months). Moreover, the longer the time-period after graduation which elapses prior to a graduate obtaining employment, the more attenuated the connection between the completion of the course and the ability of the student to find employment. In any event, schools remain free to make truthful claims about employment occurring after this time.

(c) *Trigger for Placement Disclosure.*

The Commission has made an important modification to the rule as originally recommended by its staff. Under the rule as recommended in the Staff Report, both express as well as implied job claims would have triggered the obligation of a school to disclose its placement rate to prospective students. The rule as adopted by the Commission only requires that schools make a track-record disclosure if they make *express* job or earnings claims. Express job or earnings claims are claims which contain explicit verbal or pictorial references to the availability of jobs, the ability of a school's graduates to find jobs or earn stated salaries, or to the existence of placement services. The following are examples of express jobs or earnings claims:

"There is a growing demand for operators of heavy equipment in the construction industry." A depiction of a person engaged in an employment situation who is represented to be a graduate of the school.

"Graduates of our school can earn as much as $20,000 a year."

"We will train you for a job in the computer programming field."

"Graduates of our school have been placed with some of the nation's largest corporations."

"Semi Drivers needed. Training now being offered."

"Be a truck driver. Earn big money."

As long as the claims made by a school pertain solely to the training being offered by the school and do not expressly refer or depict job availability or salary potential, the claim would not be considered to be an express job or earnings claim. Thus, the following examples, would not trigger the obligation to make a placement rate disclosure:

"We train accountants."

"Be a truck driver."

"Our training is recognized nationwide."

"We offer expert training for draftsmen and accountants."

In determining whether claims are express job claims, the Commission will consider such statements in the context in which they are made. Thus, a television commercial which depicts a person receiving a diploma, carrying it to an employer's office, shaking the employer's hand and being led to a draftsman's table would be an express claim, even if the only verbal representation made was "Be a draftsman."

(d) *Contemporaneous Disclosure of Track-record.*

As noted earlier, the Commission has found that the use of general and specific job and earnings claims, with-

out disclosing the track-record of the particular institution making the claim violates Section 5 of the FTC Act. The proposed rule recommended by the Commission's staff would have required schools to disclose their full "track-record" in any advertisement which contained a job or earnings claim. Numerous schools objected to this requirement, particularly with respect to advertisements carried in the broadcast media. (*282*) It was contended that the length of the track record disclosure recommended by the staff (which had been substantially shortened by the Commission), would be impractical in the context of the broadcast media—imposing insurmountable space and cost obstacles. In lieu of a full disclosure in advertisements, many schools argued in favor of a brief disclaimer which would simply alert prospective students to the availability of placement data. (*283*)

Cognizant of the burdens which would attend a requirement that a school disclose its full track-record of placement success in media advertisements, the Commission has opted in favor of a shorter, and simpler, disclaimer notice, (*284*) even though the disclaimer notice may not be sufficient to eliminate all deceptive characteristics of job claims which are not accompanied by the full track-record.

The Commission must balance the relative benefits which would be derived from a requirement that the full track record be disclosed against the impact such a requirement would have on the ability of schools to provide information to the public through advertising. In the recently adopted rule on The Advertising of Ophthalmic Goods and Services, the Commission placed limitations on the disclosures which could be used to encumber advertisements. (*285*) Consistent with that precedent and its underlying rationale, the Commission believes it appropriate to strike the balance, in this situation, in favor of permitting schools to continue to make job and earnings claims accompanied by a notice informing students of the availability of the school's placement rate.

While recent Supreme Court decisions have extended first amendment protection to commercial speech, (*286*) they have recognized that such speech can be regulated in some instances. Thus, the Court has expressly recognized the right of the government to regulate or prohibit false and deceptive advertising. (*287*) In some instances the appropriateness of affirmative disclosures in standardized format has been acknowledged. (*288*)

The disclaimer adopted by the Commission for use in media advertisements is brief enough to be incorporated into even the restricted time frames of broadcast media spots without unduly restricting the advertiser's message.

Some comments have asserted that the Commission is bound to adopt the least restrictive alternative to eliminate the deceptive aspects of commercial speech. (*289*) These commenters have asserted that the need for a contemporaneous disclosure, or disclaimer, in advertisements is obviated by the subsequent disclosure of the schools' placement record which must be mailed to each student. However, other commenters have argued that the doctrine of "least restrictive alternative," even if applicable to commercial speech, requires only that the least restrictive means be chosen which will cure the deception or unfairness at the time it is made. (*290*) The Commission does not believe that the doctrine of "least restrictive alternative" is applicable to government regulation of commercial speech. In fashioning its remedy the Commission seeks to employ its expertise to minimize the burdens imposed, a course it has pursued here. However, this is not equivalent to the doctrine of "least restrictive alternative." Even if applicable, the doctrine of "least restrictive alternative" does not compel abandonment of a contemporaneous remedy to a deception simply because an after the fact remedy may exist. The Commission can require a contemporaneous disclosure if necessary to render the speech non-deceptive.

5. *Substantiation.*

In Section 438.3(f) of the rule, the Commission has required that schools have a reasonable basis for any job or earnings claim which they make, if the claim is not substantiated by the disclosure form (containing the school's graduation and placement rates) required by Section 438.3 (a) and (b) of the rule. (*291*) The disclosure forms required by those sections will, in most cases, substantiate claims as to a school's most recent graduation rate or placement success. They would not be a reasonable basis for claims such as those alleging demand for a particular skill or claiming graduation or placement success based on projections beyond the base period or periods covered by the disclosure form. The record in this proceeding conclusively establishes that false or unsubstantiated job or earnings claims constitute one of the primary violations of Section 5. (*292*)

As discussed in section B(3), *supra*, schools have frequently made claims about the general job market demand which have had significant impact on students' enrollment decisions. Under the rule, the disclosure form triggered by such a claim would tell the student about the school's success in placing its graduates, but it would not necessarily substantiate the demand claim the school had made. While the rule does not require affirmative disclosure of a school's basis for such claims, in accordance with the *Pfizer* doctrine the rule requires that the school possess a reasonable basis when making the claim.

Accordingly, if a school makes any job or earnings claim which is not substantiated by its track record disclosure, the school must possess independent substantiation for the claim made. (*293*) The rule requires that the substantiation consist of a "statistically valid and reliable survey."

However, the Commission has recognized, as an exception to the standards set forth above, the right of schools to rely on job projections prepared by government agencies, such as the Department of Labor's Occupational Outlook Handbook. The rule specifically permits schools to rely on government prepared job and earnings projections as substantiation. If a school chooses to rely on such statistics as substantiation in connection with a job or earnings claim made in a non-media advertisement, the school must disclose in that advertisement all of the caveats and limitations applicable to those data. For example, if a government prepared job projection states that the projections are inapplicable to specific geographic areas, or should not be used to predict employment potential in a geographic area, such must be disclosed in the advertisement. In addition, if a job or earnings projection is modified by other information in the projection such as the type of educational background or work-experience required, this must also be disclosed. For example, if a government publication projects that jobs in the accounting field will increase greatly in the next decade, but that most of these jobs will go to persons with bachelor degrees in accounting, that fact must be disclosed in the non-media advertisement.

Because of the time and space limitations inherent in media advertisements, the caveats which must be disclosed in non-media advertisements when using government prepared job and earnings projections need not be made. The Commission has made this distinction not because it feels that this information is unnecessary in media advertisements, but only because a requirement that all caveats be included in media advertisements would place an unnecessarily severe burden on media ads. Nevertheless, a school could not make any advertising claims in reliance upon such projections if it knew or had reason to know from the caveats accompanying the projections, or for any other reason, that the projections were inapplicable to the school, its enrollees or the local-

ity served by the school. Section 438.3(f) places this restriction on any material which purports to be a reasonable basis, including government prepared job and earnings projections.

6. *Pro Rata Refund Calculation.*

(a) *Necessity as a Preventive or Remedial Requirement.*

In Section 438.4 of the trade regulation rule, the Commission has specified the refund formula which must be employed by schools subject to the rule. There are three major components to this refund formula. First, the student's financial obligation in the event of withdrawal must be determined on a pro rata basis which essentially equates the student's financial obligation to the school with the percentage of the classes attended by the student, or in the case of a correspondence course, the number of lessons submitted. Second, the refund formula permits schools to retain a registration fee to recoup the school's cost of processing the student's enrollment. Finally, the formula permits, under certain circumstances, schools to separately charge students for any equipment provided to the student during the course which is not returned to the school.

In adopting Section 438.4 of this rule, the Commission has not made a finding that existing refund policies violate Section 5's proscription of "unfair or deceptive acts or practices." Rather, the Commission has predicated the requirements of Section 438.4 on its ability to prevent and remedy practices violative of Section 5 of the FTC Act pursuant to Section 18 of the FTC Act, which empowers the Commission to adopt trade regulation rules which include requirements designed to prevent occurrences of acts or practices that have been defined as unfair or deceptive under Section 5. (*294*)

In other sections of the trade regulation rule, the Commission has defined with specificity unfair or deceptive acts and practices. For example, Section 438.2 of the rule addresses numerous unfair and deceptive acts engaged in by industry schools which attempt to, or have the effect of, circumventing the Federal and State cooling-off rules. (*295*) In Section 438.3, the Commission specifically defines the making of jobs and earnings claims without disclosing the information necessary to make those claims nondeceptive to be unfair and deceptive.

The Commission has found that many of the unfair and deceptive advertising and enrollment practices engaged in by industry schools cannot be easily proscribed; or, if proscribed, cannot be readily enforced without imposing substantial regulatory burdens on both industry and the Commission. In section (B) of this Statement for example, the Commission outlined the issues associated with the use of commissioned sales personnel to sell vocational education. In the discussion of the effect of the compensation format for sales personnel, it was noted that the use of commissions, (*296*) and quotas (*297*) together with sales personnel untrained in counseling or screening (*298*) led to frequent deception in the marketplace.

Specifically, the Commission found that current compensation schemes reward both the sales personnel as well as the schools for enrolling students on the basis of direct misrepresentations such as help wanted advertising, (*299*) misleading placement claims, (*300*) and inaccurate descriptions of such matters as course content and facilities, (*301*) the qualifications of sales personnel, (*302*) and selectivity of admission policies. (*303*) In addition, the Commission found that the compensation schemes encouraged sales personnel and schools to withhold from the market material information concerning the school's placement and graduation rates. (*304*)

The pro rata refund provision of the rule adopted by the Commission is designed to alter the incentive structure for obtaining vocational school enrollments. No longer will schools be able to derive any significant financial benefit from engaging in unfair or deceptive enrollment practices. By equating the student's financial obligation with the length of his or her stay in the course, schools will be financially motivated to enroll only students with a genuine interest in the course. The use of deception to enroll students will no longer result in the creation of a large financial obligation to the school in the event of withdrawal. (*305*)

The rule avoids the burdens and deficiencies of any attempt at detailed policing of the practices described. Instead, it minimizes the extent of regulation while at the same time effectively curtailing practices violative of Section 5 of the FTC Act. The Commission's rule on door-to-door sales, 16 CFR Part 429, similarly seeks to eliminate undue pressure and unfair sales practices through an indirect remedy rather than proscribing all of the possible objectionable conduct.

As set forth below, some of the interested parties in this proceeding oppose the refund requirement. None have suggested any alternative regulation that would protect consumers effectively without requiring an undesirable, and ultimately unattainable, regulatory intrusion into day-to-day school operations. The Commission believes the refund and cooling-off provisions of the rule are necessary to provide adequate protection for students without imposing unreasonable regulatory burdens.

(b) *Industry Opposition to Pro Rata.*

In 38 U.S.C. Section 1776(c), Congress set forth the refund policy to be followed by correspondence schools participating in the Veterans Benefits programs. Some participants in this proceeding contended that this Congressional enactment precludes the Commission from requiring that a more stringent refund standard be followed by correspondence schools. (*306*) The Commission requested an interpretation of 38 U.S.C. § 1776(c) from the Veterans Administration. (*307*) The VA has stated that it interprets 38 U.S.C. § 1776(c) as merely establishing the minimum refund standard which must be employed by correspondence schools participating in the Veterans Benefits programs. (*308*) The VA further concluded that it does not view its statutory mandate, as expressed in Title 38, as precluding the Commission from requiring adherence to a more stringent refund standard.

The Commission does not believe that the minimum refund standard set forth by Congress precludes Commission adoption of Section 438.4 of this trade regulation rule. The Commission has not found that continued adherence to the refund policy set forth in 38 U.S.C. Section 1776(c) is an unfair act or practice within the meaning of Section 5(a)(1) of the FTC Act. Rather, the Commission has found that to prevent other specifically defined unfair acts and practices, and to minimize the amount of regulation that would otherwise be required, it is necessary to eliminate the financial incentives which encourage schools to enroll students through deception and misrepresentation. The refund policy established by the Commission in Section 438.4 is the vehicle adopted by the Commission to accomplish that end.

A number of schools have objected to a pro rata refund requirement on the ground that it would not permit them to recoup their expenses when a student drops out. (*309*) In effect, schools have argued that they will be forced to raise their tuition to cover the loss in revenue which would attend a pro rata requirement. (*310*) As a consequence, it is argued, students who remain in school would be subsidizing drop outs through the payment of higher tuition. (*311*) In his report, the Presiding Officer in this proceeding concluded that a pro-rata refund policy might not adequately compensate a school for its fixed costs in all cases. (*312*)

In evaluating this argument one must differentiate among the various types of fixed costs involved. What the commenters refer to as "fixed costs" often include a sizable component for student acquisition costs such as advertising costs and commissions. For

some schools these can amount to 30% to 50% of total operating expenses. (*313*) The record here indicates that such high acquisition costs are frequently accompanied by unfair and deceptive sales practices. Under current refund policies each drop out makes a disproportionate contribution to such expenses. A school not only profits directly from using unfair and deceptive practices to enroll students, it profits indirectly in that the subsidization of graduates by drop outs permits the school to maintain the face price of the course at a level below the true cost of producing a graduate, thus increasing the overall demand for the school's product. (*314*)

Other kinds of fixed costs present greater difficulties. The argument against pro-rata is that the enrollee has occupied a place in the class and has committed himself or herself to paying his or her share of the fixed costs. If he or she drops out, it is argued, then any refund greater than actual cost savings to the school necessarily and unfairly shifts these costs to the students who remain enrolled.

There are several responses to this. First, to the extent that a school obtains enrollees through unfair or deceptive practices, the same argument applies to fixed costs as applies to acquisition costs. The marketplace in vocational school courses should function more effectively if such costs are more reasonably related to the production of graduates, not the production of enrollees. Second, as a practical matter, the situation rarely arises. A necessary predicate of the so-called "empty chair" is that a course vacancy has occurred because another prospective student was turned away from the school in favor of the student who subsequently withdrew. However, the proponents of this argument have failed to produce any substantial evidence to support this argument. The record evidence simply does not support a finding that schools have turned away prospective students because of enrollment limitations.

If all schools covered by the rule engaged in unfair or deceptive practices there would be little doubt about the appropriateness of a pro rata refund policy. The Commission's conventional fencing-in authority is more than broad enough to justify a pro-rata refund in such cases. However, not all schools have engaged in practices violative of section 5 of the FTC Act, and the pro rata refund requirement is being imposed under the statutory authority of the Magnuson-Moss Act, not the general fencing-in authority applicable to adjudications. Thus, the matter squarely presents the question of the Commission's authority to impose requirements on businesses which may not have engaged in the particular practices found to violate Section 5.

That this authority exists is beyond dispute. In giving the Commission authority to promulgate industry-wide trade regulation rules which include the power to enact provisions to prevent unfair or deceptive acts or practices, Congress clearly intended to enable the Commission to fashion remedies of sufficient scope to be effective. Almost any rule with industry-wide impact will affect some segment of the population which may not have engaged in the offensive conduct. At the same time, the Commission recognizes the undesirability of imposing prophylactic burdens out of proportion to the problem involved.

This is not a matter which lends itself to elaborate quantitative calculation. As discussed earlier, the difficulties in pinpointing an exact level of prevalence are formidable, and would make any such calculation suspect. More important, however, is the structure of the rule. As we have repeatedly emphasized, this rule, and particularly the pro-rata provision, is designed not as a command-and-control rule specifying the details of day-to-day conduct, but as a rule which eliminates unfair and deceptive practices by changing the incentive structure which has produced them. Under such circumstances the Commission can be confident that the pro rata refund policy moves the incentive structure in the proper direction, but no analytic methodology exists that would predict the exact magnitude of the changes.

This leaves the question whether the pro-rata refund requirement imposes burdens on schools that have not violated Section 5 which outweigh these real, though indeterminable, benefits. The Commission does not believe it will, largely because it does not believe that the net effect of the provision will be to impose an undue burden upon schools. (*314a*) While it is important to recognize that any refund provision is likely to have an uneven impact upon different schools, the Commission is persuaded that most schools will have adequate information available to predict drop-out rates, (*315*) and can revamp their course price structure to reflect the new refund policy. To the extent that course costs rise in response to the adoption of pro rata refund formulations, they should basically reflect the true cost of educating a "stay-in-school" student. In some cases, albeit a limited number, an incremental increase in costs above true market levels for educating a graduate may occur. In these cases a burden will be imposed, not on the school, but on the graduates of that school. While the Commission is cognizant of this possibility, on balance, the Commission believes that the policy choice of a pro rata refund policy it has made is necessary. Indeed, any incremental increase in tuition costs above the cost of educating a graduate simply constitutes a "drop-out insurance policy" for such students. In effect, should this occur, the student would be incurring an expense to have the benefit of a pro rata refund which would protect the student should he or she opt for cancellation. The primary point to be made, however, is that the Commission does not anticipate this outcome as a likely one.

In the rule adopted by the Commission, schools are given an option as to whether to include "equipment" within the cost of the course which is subject to the pro rata refund requirement. A school may, at its option, disclose in the enrollment contract the amount it is charging for any equipment that it is providing to the student. In the event that a student withdraws from such a course, the school may charge the student the full amount for that equipment if the student fails to return the equipment to the school within a specified period of time. (*316*) If the student does return the equipment, the school must include the cost of the equipment in the total cost to the student which must be pro-rated.

A number of schools argued that they should be permitted to retain the "fair market value" of any equipment which they provide to their students. (*317*) The inclusion of a requirement in the rule that schools charge only the fair market value of the equipment provided produces significant problems. First, it is difficult to determine what is the fair market value of course materials to be distributed to students, particularly in the case of a correspondence course. Second, effective enforcement of such a requirement would involve the Commission in a myriad of determinations as to whether the price charged by a school for a particular piece of equipment was the "fair market value."

However, the Commission does recognize that some exemption for equipment is appropriate. The Commission's equipment exception permits schools to retain the full amount charged for any equipment not returned to the school, and a pro-rata portion for any equipment returned. (*318*) The Commission's policy on equipment is considerably more liberal to schools than are the policies currently employed by many states and two of the major accrediting associations. (*319*)

The final issue concerning Section 438.4 is the adequacy of the registration fee permitted under the rule. The rule permits schools to retain a maximum of $75 registration fee for any

student who enrolls and does not cancel during the cooling-off period. (*320*) This $75 maximum figure represents an increase over the $25 maximum which had been recommended by the Commission's staff. (*321*) A number of schools had argued that the amount recommended by the staff was insufficient to permit them to recoup the per capita expenses incurred in soliciting and enrolling a student. (*322*)

The Commission has permitted schools to retain a registration fee to cover the costs reasonably associated with processing an enrollment application. It is not designed to permit schools to recoup the advertising and enrollment expenses associated with obtaining an enrollment. If the Commission were to set the registration fee at a level which permitted schools to recoup their expenses in attracting potential students, the incentive structure would favor a return to the enrollment practices which gave rise to this rule. The figure chosen by the Commission is within the range supported by many of the schools commenting on the rule. (*323*)

7. *Preemptive Effect of the Rule.*

In Section 438.9 of the rule, the Commission has set forth the extent to which the rule preempts inconsistent state laws, rules, and regulations. A number of states currently specify cooling-off periods applicable to vocational school enrollment contracts, refund policies, and other similar matters. The Commission believes that it is desirable to have the states experiment with alternative forms of consumer protection in the areas covered by the Commission's rule, so long as the state's activities satisfy the minimum standard of protection provided by the Commission's rule.

To ensure that the states retain the right to experiment and evolve alternative regulatory schemes in the areas covered by the rule, the Commission has, in Section 438.9 of the rule, set forth the process by which states may apply to the Commission for an exemption for their laws from the effects of the rule.

Unfortunately, the decision as to whether a state law "affords greater protection" to a student is not always clear cut. Consider, for example, a refund policy with the following attributes:

(a) A $25 flat registration fee;

(b) Pro rata formula to the 75% mark in the course after which no refund is required;

(c) No provision for a separate equipment charge;

(d) A private right of action for a student who does not obtain the proper refund; and

(e) Required contract language which is extremely legalistic and difficult to understand.

In some respects, such a refund policy would be more stringent than that adopted by the Commission, while in other respects the Commission's rule would be more protective. Since both the state law and the Commission's rule would mandate language, a school would be faced with the dilemma of complying with either state law or the FTC's rule. If a school faced with this decision resorted to state court or federal court for a declaratory judgment, it would create a situation where different courts might arrive at conflicting conclusions on whose law was applicable.

If, alternatively, a school requested an advisory opinion from the Commission, the Commission's opinion would not necessarily bind a state court that could conclude that the Commission was wrong, and that the state law was (or was not) applicable. The level of uncertainty which would result from this approach is not only undesirable, but also intolerable for the states, the Commission, and the affected schools.

The Commission has specified in Section 438.9 of the rule that state or local governmental entities may petition the Commission to obtain an exemption for their statutory provisions, if they believe that the comparable state provisions afford consumers greater protection than does the Commission's provisions, and the state requirement would not frustrate the purpose of the rule's provisions. Any action by the Commission to grant such an exemption petition would be conducted in accordance with 5 U.S.C. Section 553.

The exemption process employed by the rule is similar to that used by Congress in Title I of the Magnuson-Moss Act (*324*) to exempt state warranty laws which offer greater protection to consumers than the analogous Magnuson-Moss provisions, (*325*) by the use of Section 553 rulemaking procedures of the Administrative Procedure Act, 5 U.S.C. Section 553. (*326*) Moreover, the exemption process contained in the rule accords with the standards set out in Section 18(g)(7) of the FTC Act which provides that:

Any person to whom a rule under Subsection (a)(1)(B) of this section applies may petition the Commission for an exemption from such rule . . . Section 553 of title 5, United States Code shall apply to action under this paragraph.

Section 438.9 of the rule also addresses the factors which will be considered by the Commission in determining whether an exemption is warranted.

The Commission will consider factors such as the means available to the state to enforce their provision, the existence of any private rights of action by an aggrieved consumer, and the "readability" of notices directed to the consumer to understand his or her rights under the state law.

In some cases, the Commission will necessarily have to balance competing considerations. For example, a state law which applies a more stringent substantive standard than the Commission's cooling-off rule (Section 438.9 of the rule) but which lacked a private right of action (either explicitly by statute or through a lack of mandated contract language) or contained inadequate notice provisions might not satisfy the general standard of "greater protection to the student."

Finally, it should be emphasized that only state or local governmental entities may request exemptions from the Commission's rule under Section 438.9. Schools and other private parties may not avail themselves of this process. The determination to grant an exemption to state law will necessarily place the primary enforcement burden back onto the state to enforce its provision. Such a decision should be made solely by the state entity involved. The only exemptions available for which schools may apply is that available under Section 18(g) of the FTC Act; *i.e.*, should a school believe that its peculiar circumstances warrant an exemption from the rule, it may petition the Commission.

8. *Economic Impact on Small Businesses and Consumers.*

It is difficult to assess, with any great degree of certainty, the likely effect of this trade regulation rule on small businesses. The evidence in the record in this proceeding establishes that a very high percentage of persons who enroll in vocational school courses drop out of those courses, frequently during the first few classes, or after having submitted only a few lessons. (*327*) In part, this high rate of early drop-outs is the direct result of the unfair and deceptive advertising and enrollment practices employed by some schools to recruit potential students. (*328*) For example, counsel for two of the major accrediting organizations admitted that many schools engaged in practices which negate the effectiveness of existing cooling-off periods. (*329*) Thus, is is likely that to the extent that this rule eliminates unfair or deceptive advertising and enrollment practices, and ensures students a full and fair cooling-off period after enrollment, the rule will have the effect of reducing the number of students who enroll in courses covered by the rule. Although the rule will thus be reducing the demand for this educational service, it will not be reducing demand among those persons who are genuinely interested in the product

and service being offered by industry schools. Rather, the rule will prevent or at least limit enrollments by persons whose enrollments have been secured through practices which violate Section 5 of the FTC Act.

Although the majority of all institutions covered by this rule would be considered "small businesses" the Commission nonetheless believes that all schools, regardless of size, should remain subject to the rule. The rule recommended by the Commission's staff would have exempted from its coverage schools which enrolled fewer than 75 enrollees in a single year. Thus, many of the smallest schools would not have been directly affected by the rule. However, considerable negative comment was submitted by other schools concerning this exemption. Some of these comments contended that the 75 student limit was arbitrary and unrealistically low. (*330*) Other comments claimed that the record demonstrated that the practices engaged in by schools enrolling fewer than 75 students per year did not differ substantially from larger institutions. (*331*) The Commisson's staff recommended this exemption primarily to minimize the enforcement burden on the Commission. However, the Commission finds this reason to be insufficient to warrant an exemption in this case.

We have discussed in each section of this statement, how students and potential students will benefit from the substantive requirements of this rule—and compared these benefits to the costs and burdens imposed on schools subject to the rule. The Commission believes that these benefits significantly outweight the costs which complying with the rule will impose on either the schools or consumers. Set out below is a brief recapitulation of the burdens and benefits deriving from the rule.

Very little additional cost is imposed on the schools by the cooling-off provision. Schools already comply with the technical requirements of federal and state cooling-off laws (although they frequently employ conduct designed to negate the effects of those protections) and the extension of this rule both in terms of time (fourteen days instead of three) and coverage (all enrollments instead of only those consummated away from the place of business of the school) will not appreciably increase present compliance costs. (*332*)

On the other hand, the potential student will be protected against the untoward consequences of the acceptance process and will receive a longer period of time to consider his enrollment decision and evaluate the school's track record.

The costs of making the track record disclosures are also minimal. The collection of graduation rate information and its disclosure imposes no significant economic burden on the schools. The information as to how many students graduate from a course and how many drop out is readily available and most schools already generate the information in the normal course of their operation.

Schools which make express jobs or earnings claims will usually have to incur the costs of surveying their graduates to obtain placement and earnings data. However, this information is necessary to prevent deception and to place typical jobs and earnings claims in a perspective which is meaningful to the potential student. The Commission has found that the placement record of the school is one of the most important tools a prospective student can have in evaluating his or her enrollment decision. Morever, the information required to be disclosed by the rule is the kind of information schools must have in any event under existing law in order to substantiate a job or earnings claim. Furthermore, to the extent that schools will incur costs in gathering this information, the evidence shows that this cost will not be substantial. (*333*) Finally, schools can avoid survey costs entirely by not making express jobs or earnings claims.

Insofar as the substantiation requirement is concerned, the cost a school must bear is dependent upon the support which already exists for any given claim. If a reasonable basis is already available, costs will be insignificant. If no support exists, the school may have to incur the cost of conducting a survey in order to substantiate a claim it desires to make. However this is a value judgment entirely within the control of the school.

The pro rata refund requirement imposed by Section 438.4 of this rule may have the effect of decreasing the gross revenues of some institutions. However, such a reduction should only occur to the extent that unfair advertising and enrollment practices are being used. In some cases, there may be rises in course costs. Nevertheless, the evidence demonstrates that under current refund policies, drop-outs are frequently subsidizing the "stay-in-school-students," thereby permitting schools to maintain course costs below the levels which a properly functioning market would establish. (*334*) Thus, to the extent tuition costs may rise in some instances, that fact is likely to reflect only the true costs of educating a student through to graduation.

The benefits of imposing the pro rata refund are the elimination of incentives to engage in the harmful marketing practices which the Commission has found to exist in the vocational school industry. As we have already discussed in section C(6), *supra*, the Commission believes that the pro rata refund remedy is a very effective means of preventing these marketing abuses from continuing.

9. *Readability of the Rule.*

In this rule, the Commission has taken a major step toward the goal of writing understandable regulations. The rule requires that two notices be directed to students; the first of these is inserted in the enrollment contract, the second is mailed to the student after the enrollment contract is signed. (*335*) These notices explain to the student his or her cooling-off and refund rights. In addition, the rule specifies the format to be used by schools to inform potential students of the school's graduation and placement rates. (*336*) Each of these documents has been carefully written, and they have been reviewed by "readability" experts to help ensure that the language used is readable.

In the version of the rule recommended in the Staff Report, a similar effort had been made to ensure that the notices were readable. However, the notices recommended at that time were subjected to considerable criticism by schools who contended that the notices were unduly simplistic, negative in tone, and suggestive to students that they should drop out of the school. (*337*)

The notices adopted by the Commission are premised on two basic principles. First, language was employed which would impress upon the consumer the solemnity which should attend the execution, or cancellation, of a contract. Second, readability and brevity are not necessarily synonymous.

The notices which the rule requires vary with type of course, and whether or not the school makes a separate equipment charge. In all, there are eight different course options, each of which requires different language in the notices. (*338*) Just as the notices were drafted to be easily understood by consumers, the notices have been written so as to enable a school to read the rule and quickly ascertain precisely what conduct is required of it. Cross references and bracketed alternative language have, where possible, been eliminated. Thus, for each of the eight course options, the rule contains the complete notice required, with the optional language inserted for each case. Although such specificity increases the length of the rule it greatly enhances the ability of a school to look at the rule, and see precisely what language must be included in its notices.

10. *Effective Date of the Rule.*

In establishing January 1, 1980, as the effective date of the rule, the Commission was cognizant of two factors. First, schools would need time to acquire graduation and placement information for their disclosure forms; second, schools would need lead time to make changes in their documents and promotional materials.

Graduation and placement information must be gathered in terms of base periods six months long. Additionally, a four month period must elapse before information from the most recent base period can be used. The effective date set by the Commission will allow schools to start with the period, January 1, 1979, through June 30, 1979, as the first base period.

The rule requires a four base period disclosure (2 years), where available for home study schools because of the longer enrollment times involved. A minimum two base period disclosure is permitted if students have enrolled only during those periods. Similarly, for residence schools without fixed class schedules, the disclosure will usually be comprised of two base periods. The rule's effective date does not provide enough time for initial disclosures covering more than one base period. Therefore, for the first six months after the effective date, those schools will have to disclose the information for only one base period even if the disclosure places the overwhelming majority of students in the "still enrolled" category. This represents a temporary deviation from the rule's standard. However, the Commission believes that, in the interim, some information is better than none at all.

The lead time permitted by the Commission should be ample for the changes which must be made in schools' documents and promotional materials. This time should also permit schools to expend or significantly reduce current supplies of noncomplying materials.

FOOTNOTES

1. 39 Fed. Reg. 29385. The rule adopted by the Commission covers only "for-profit" vocational schools and does not cover any programs offered by those schools which culminate in a standard college degree. These issues are discussed in sections B(1) and C(2), *infra*.

2. P.L. 93-637, 88 Stat. 2183, 15 U.S.C. § 2301 (1975).

3. 40 Fed. Reg. 15232 (April 4, 1975); 40 Fed. Reg. 33966 (Aug. 13, 1975).

4. 40 Fed. Reg. 21048 (May 15, 1975).

5. 40 Fed. Reg. 44582 (Sept. 29, 1975).

6. Hearings were convened in San Francisco on December 1, 1975; in Los Angeles on December 15, 1975; and Chicago on January 12, 1976.

7. All such comments were separately filed under category K of the public record and appear in volumes 215-38-1-11-1 through 215-38-1-11-17.

8. This "rebuttal" comment period commenced on February 1, 1976 and concluded on March 1, 1976.

9. 41 Fed. Reg. 47267 (Oct. 28, 1976).

10. 40 Fed. Reg. 55368 (Nov. 28, 1975).

11. 42 Fed. Reg. 1483 (Jan. 7, 1977).

12. Federal Trade Commission (Bureau of Consumer Protection), Staff Report on Proprietary Vocational and Home Study Schools and Proposed Trade Regulation Rule, Exhibit P-1 at 337-50. (Hereinafter cited as "Staff Report").

13. All such comments were separately filed under category Q of the public record and appear in volumes 215-38-1-18-1 through 215-38-1-18-3.

14. Exhibit O-2.

15. 42 Fed. Reg. 62496 (Dec. 13, 1977); *see also* 42 Fed. Reg. 60561 (Nov. 28, 1977).

16. Staff Report at 9.

17. Although called "residence," most such schools do not offer away-from-home training with rooming facilities; the majority offer solely classroom training to which students commute from home.

18. *See* Staff Report at 9.

19. *Id.*

20. Examples of courses offered by trade and technical schools include training in mechanical skills, welding, drafting, truck driving and heavy equipment operation, electronics, broadcasting, medical and dental assistant duties, and travel services.

21. *E.g.*, training in secretarial skills, bookkeeping, accounting, data processing, and fashion merchandising and modeling.

22. Flight schools offer courses designed to qualify students in mechanical skills applied in the aviation field.

23. *E.g.*, training in hair styling, barbering, beauty treatment, and complexion care.

24. *See* Staff Report at 10.

25. *Id.*

26. *Id.* at 18-19.

27. *Id.* at 20-21.

28. Comments of the National Home Study Council, p. 4, Exhibit K-439.

29. A 1974 Veterans Administration study showed that 66% of all home study students were enrolled in courses related to the following six occupational groups: electronic mechanics and repairmen; automobile mechanics and repairmen; air-conditioning, electronic technicians; heavy equipment operators; and electrical trades. *Veteran Participation in Correspondence Courses in Schools Other than College, Fiscal Year 1974*, attachment to letter of O. Vaughn, Chief Benefits Director, Veterans' Administration (Sept. 4, 1974), Exhibit H-149. *See* Staff Report at 11.

30. *See* Staff Report at 9-10.

31. *Id.* at 19-20.

32. National Commission on the Financing of Postsecondary Education, *A Context for Policy Research in Financing Postsecondary Education, A Staff Report*, p. 83, Exhibit H-157 (hereinafter cited as "NCFPE").

33. National Center for Education Statistics, *Schools with Occupational Programs*, p. 17, Exhibit H-237.

34. A 1976 Veterans Administration study showed that veterans paid an average of $728 for home study courses. Office of the Controller, VA *Training by Correspondence Under the G.I. Bill* (June, 1976), pp. 25, 29. *See* Staff Report at 21-22.

35. Attachments to the testimony of G. O. Allen, President, Cleveland Institute of Electronics, Field Policy Manual, Exhibit L-119.

36. Comments of Bell & Howell Schools, Inc., Exhibit K-856.

37. *See* Staff Report at 14-15.

38. *Id.* at 15-16.

39. *Id.* at 16-17.

40. *Id.* at 16-17.

41. National Home Study Council, *Annual Reports of Schools*, Exhibit B-29.

42. *See* Staff Report at 17.

43. Stanford Research Institute, *Private Occupational Schools*, p. 2, Exhibit A-35.

44. Approximately 1,500 of the estimated 7,000 schools were accredited in 1974. *See* Staff Report at 9, 12-13.

45. A discussion of the functions of the accrediting associations appears at B(8)(c), *infra*.

46. *See* Staff Report at 13.

47. 38 U.S.C. Chapters 34, 35, and 36. *See* Staff Report at 280-283.

48. 38 U.S.C. Chapter 36.

49. *See* Staff Report at 259-264.

50. *Id.* at 24-25.

51. *Id.* at 25-26.

52. Submission to accompany the testimony of J. O. Brown, President, NHSC, Exhibit L-131.

53. Comments on Bell & Howell Schools, Inc., Exhibit K-856. *See* Staff Report at 26.

54. *See* Staff Report at 27-28.

55. American Institute for Research, *A Comparative Study of Proprietary and Non-Proprietary Vocational Training Programs* (1972), p. N-12, Exhibit A-3 (hereinafter cited as "AIR Study").

56. *Id.*, at N-16.

57. *See* Staff Report at 28.

58. *Id.*

59. *Id.* at 28-29.

60. *Id.* at 29.

61. *Id.* at 29-30; *Report of the Presiding Officer: Proposed Trade Regulation Rule: Advertising, Disclosure, Cooling-off and Refund Requirements for Proprietary Vocational and Home Study Schools* (Sept. 10, 1976), Exhibit O-1, at 23 (hereinafter cited as "Presiding Officer's Report").

62. *Id.* at 31-34.

63. *Id.* at 34-35.

64. NCFPE, *supra* note 32, at 129.

65. Such sources include the College Work Study Program, Manpower Development and Training Act programs, National Defense Student Loans, and various aid programs sponsored by the individual states. *See* Staff Report at 35.

66. Submission to accompany the testimony of J. O. Brown, President, NHSC, Exhibit L-131.

67. *See* Staff Report at 35-37.

68. "Summary of Responses to Questionnaire Sent to Veterans and Servicemen Who Had Received Educational Assistance from the Veterans' Administration for Enrollment in Correspondence Courses as of June 30, 1970," Exhibit C-43; AIR Study, *supra* note 39.

69. *Id.*

70. *See* Staff Report at 36, note 48.

71. *Id.* at 36, note 49.

72. *See* Staff Report at 37-42; Presiding Officer's Report at 39-41.

73. *See* Staff Report at 44-71; Presiding Officer's Report at 33-35, 54.

74. *See* Staff Report at 44-47; Presiding Officer's Report at 85.

75. *See* Staff Report at 47-51; Presiding Officer's Report at 34.

76. *See* Staff Report at 51-52; Presiding Officer's Report at 34-5.

77. *See* Staff Report at 52-56.

78. *Id.* at 56.

79. *Id.* at 57-65.

80. Although student testimonials may, in some instances, reflect a generally successful placement record, experts agree that such testimonials are inherently misleading, since they do not provide the prospective enrollee with any realistic measure by which to predict his or her own potential for success. *See* Staff Report at 65-66.

81. The record shows that placement claims such as "[our] constant efforts have often resulted in far more positions than the supply of qualified graduates" are used more frequently than explicit placement percentages. *See* Materials from File No. 742 3161, Job and Opportunity Advertisers, Unnamed, Exhibit C-210.

82. *See* Staff Report at 66-68.

83. *Id.* at 68-71.

84. When schools' advertising does contain references to specific percentages or numbers of graduates placed and salaries obtained, students are still apt to be misled because of inherent methodological and contextual variances in such data. Because no industry-wide standards for calculating such statistics exist, each school is free to devise its own criteria as to what types of data will serve as the basis for its claims and how that data will be interpreted for advertising purposes. As a result, students not only are unable to make valid comparisons among competing schools' claims but are misled by the failure to explain the methodology underlying the statistics. *See* Report at 69, 383-384.

85. *See* Staff Report at 69; Presiding Officer's Report at 75-6.

86. *See* Staff Report at 70-71, 384, 387-389; Presiding Officer's Report at 76.

87. *See* Staff Report at 71-79.

88. *Id.* at 72.

89. The *Handbook* is a massive compilation of information which describes job requirements and projected demand in selected occupations. It also contains information on the educational and work experience prerequisites for jobs in each field. *See* Staff Report at 72-75.

90. *See* Staff Report at 74-77.

91. *See* Staff Report at 77-78; Presiding Officer's Report at 75-76.

92. *See* section B(7), *infra*; and Staff Report at 78, 390.

93. *See* Introduction to the *Occupational Outlook Handbook*, Attachment D to Comments of the U.S. Department of Labor, Exhibit K-623; and California Department of Labor, *California Labor Supply and Demand*, Exhibit C-198.

94. For example, the preface to the Labor Department's *Handbook* provides the following cautionary note: Information about future outlook in an occupation is very difficult to develop. No one can predict future labor market conditions with perfect accuracy. . . . Methods used by economists to develop future occupational prospects differ and judgments which go into any assessment differ. Therefore, it is important for users of the *Handbook* to understand what underlies each statement on outlook. (Comments of Department of Labor, Attachment D, Exhibit K-623).

95. *Id. See also* Staff Report at 391-392.

96. *Id.*

97. *See, e.g.*, testimony of J. Wich, Assistant Professor of Marketing, University of Oregon, Tr 4210 at 4220-24.

98. *See* Staff Report at 77-78.

99. *Id.* at 79-105.

100. *Id.* at 80-82.

101. *Id.* at 82-85.

102. *Id.* at 85-86.

103. *Id.* at 86-87.

104. *Id.* at 92-95.

105. *Id.* at 88-90.

106. *Id.* at 90.

107. *Id.* at 90-91.

108. *See e.g.*, 16 CFR Part 429.

109. *See* section B(4)(a)(2), *infra*; and Staff Report at 92.

110. *See* section B(4)(a)(3), *infra*; and Staff Report at 91.

111. *See* section B(5)(b), *infra*.

112. *Id.*

113. *See* Staff Report at 106-107.

114. *See* Staff Report at 110-111; Presiding Officer's Report at 41-46.

115. *See* Staff Report at 109-111; Presiding Officer's Report at 42-46.

116. *See* Staff Report at 109-110; Presiding Officer's Report at 42-46.

117. *See; e. g.;* Statement of Roland E. Lopez, former vocational school salesman (Atlantic Schools, Bryman Schools, La Salle, Jetma) (Jan. 27, 1976), Exhibit E-206.

118. *See* Staff Report at 109-110; Presiding Officer's Report at 50.

119. *See* Staff Report at 108.

120. *See* Staff Report at 112; Presiding Officer's Report at 38, 46-48.

121. *See* Staff Report at 112.

122. *Id.* at 113-121.

123. *See* Staff Report at 113-116; Presiding Officer's Report at 50.

124. *See* Staff Report at 119-120; Presiding Officer's Report at 50.

125. *See* Staff Report at 123; Presiding Officer's Report at 50-54.

126. *See* section B(5), *infra*; and Staff Report at 114.

127. *See* Staff Report at 114.

128. *Id.* at 121-123.

129. *See* Staff Report at 123-124; Presiding Officer's Report at 48-49.

130. *See* Staff Report at 125.

131. The record documents several instances where sales personnel identified themselves as representatives of the Veterans Administration or the Department of Health, Education, and Welfare who were responsible for making government loan money available to students. *See* Staff Report at 126-127; and Presiding Officer's Report at 34.

132. *See* Staff Report at 127-131. For example, a large home study school's sales training manual contains the following directive: "You (the . . . salesperson) need to sell the interview first. Establish yourself as a counselor or advisor, not a money-grubbing, hit-and-run, fast buck artist. Overcome his natural suspicions." "Planned Sales Presentation for CREI Electronics Program," a division of the McGraw-Hill Continuing Education Co. (April 1972), Exhibit E-132.

133. *See* Staff Report at 125.

134. *See* Staff Report at 131-152; Presiding Officer's Report at 38-39, 47.

135. The testimony of numerous salespersons and school sales training manuals in the record contain elaborate descriptions of the negative sell strategy. *See, e.g.*, Staff Report at 131, note 73; at 132, note 75; at 135, note 77.

136. *See* Staff Report at 134-143.

137. *Id.* at 137-143.

138. Testimony of A. Goldberg, former American Motel Schools salesman, Tr. 2799 at 2801.

139. Testimony of M. Cohen, former American Training Service salesman, Tr. 2213.

140. *See* Staff Report at 150-152.

141. *See, e.g.*, Lewis Hotel/Motel School, sales interview script, Exhibit E-23.

142. *See* Staff Report at 152.

143. *See* Staff Report at 97-105, 123-152; Presiding Officer's Report at 54.

144. *Id.* Staff Report at 153-162, 285-287, 300-309.

145. *Id.* at 153-162.

146. *Id.* at 153.

147. *Id.* at 153-162, 285-287, 300-309.

148. *Id.* at 305-309. The Commission does not question the desirability of these federal assistance programs. Rather, the Commission is concerned with the manner in which these programs have been abused through various marketing mechanisms.

149. Of course, drop-out rates vary greatly within the industry; the home study sector as a whole experiences higher drop-out rates than does the residence school segment, and the drop-out rates of certain occupational programs and individual schools are far lower than the statistics for the industry as a whole would reflect. *See* Staff Report at 169-173; Presiding Officer's Report at 139-140.

150. *See* section B(6)(a), *infra*.

151. Submission to accompany testimony of J. O. Brown, President, NHSC, Exhibit L-131.

152. *See* Staff Report at 173.

153. *Statistics cited in Report to Accompany S. 2161, Vietnam Era Veterans Readjustment Assistance Act of 1972*, Report No. 92-988 (July 26, 1972), pp. 54-55, Exhibit B-4. It should be noted that these figures do not include non-starts—students who are obligated for a registration or similar fee but who have not yet completed a lesson or attended a class.

154. *Id.;* Staff Report at 174-175.

155. *Id.* at 175.

156. *Id.* at 176-180.

157. *Id.* at 181.

158. *Id.* at 181-182.

159. *See* Staff Report at 182-183; Presiding Officer's Report at 145.

160. *See* Staff Report at 184, 404-417.

161. *See* Staff Report at 184, 404-417; Presiding Officer's Report at 145-146.

162. *See* Staff Report at 185-187.

163. *See* section B(1)(d), *supra*.

164. *See* Staff Report at 188-190.

165. 38 U.S.C., §§ 1776, 1786.

166. HEW, USOE, "Federal, State and Private Programs of Low Interest Loans to Students in Institutions of Higher Learning," 40 Fed. 7586 (Feb. 20, 1975), 45 CFR, § 177.63(a). *See* Staff Report at 191-192.

167. *See* Staff Report at 193-196.

168. *Id.* at 196-197.

169. *Id.* at 197-199.

170. *Id.* at 199-200.

171. HEW, Region IV, Audit Report—Alverson-Draughon Business College, Birmingham, Ala. (Dec. 31, 1974), Exhibit H-193; HEW, Region IV, "Task Force Review of Florida Proprietary Vocational Schools Participating in the Guaranteed Student Loan Program," Exhibit H-201. Subsequent to these findings, Congress enacted the Education Amendments of 1976, Pub. L. No. 94-482, 90 Stat. 2081 (1976), containing provisions regarding student consumer information services and authorizing the Commissioner of Education to suspend or terminate the eligibility status of any institution found to have engaged in substantial mis-

representation of the nature of its educational program, its financial charges, or the employability of its graduates. A representative of the Office of Education testified before the Commission that USOE is presently drafting regulations and implementing others addressed to these problems and is undertaking an effort to assist states in strengthening their own legal approval processes. Testimony of John R. Proffitt, Office of Education, HEW, on January 12, 1978 at 127-130.

172. *See* Staff Report at 200-207, 454-470.

173. *Id.* at 470-474. The Commission wishes to make it clear that it is not finding that adherence to the refund standards employed by the major accrediting associations, and by the Veterans Administration pursuant to 38 U.S.C. 1776(c), constitute unfair acts or practices within the meaning of Section 5 of the FTC Act. The Commission is concerned that these standards are not sufficient to dissuade schools from the unfair and deceptive practices identified in the record.

174. *Id.* at 210.

175. *See* section B(3)(a), *supra;* Staff Report at 211-212.

176. *See* Staff Report at 214.

177. *Id.* at 214, 257, 280-315.

178. *Id.* at 215-217.

179. *Id.* at 217-222.

180. Wellford W. Wilms, "The Effectiveness of Public and Proprietary Occupational Training," Center for Research and Development in Higher Education, University of California, Berkeley (Oct. 31, 1974), Exhibit C-110; *See* Staff Report at 217-219.

181. *See* Staff Report at 220-222.

182. *See* section B(5), *supra.*

183. *See* Staff Report at 208-209, 217-222.

184. *Id.* at 229-240.

185. *Id.* at 240-244.

186. *Id.* at 245.

187. *Id.* at 245-247.

188. *Id.* at 223-247.

189. *Id.* at 229.

190. *Id.* at 217, 229, 506-509.

191. *Id.* at 258a-334.

192. *Id.* at 259-276, 511-512.

193. *Id.* at 259-260.

194. *Id.* at 259, 511-512.

195. *Id.* at 184-188, 260-263, 512.

196. *Id.* at 259, 512.

197. *Id.* at 264-274.

198. *Id.* at 267-271.

199. *Id.* at 269-274.

200. *See* section B(3) and (4), *supra.*

201. *See* Staff Report at 274-276, 512-513.

202. *Id.* at 276-280, 291-294.

203. 38 U.S.C. §§ 1653(a), 1978; 20 U.S.C. § 1141.

204. *See* Staff Report at 513.

205. *Id.* at 513.

206. *Id.* at 282-283, 288-291.

207. *Id.* at 295-297.

208. *Id.* at 301, 308-311, 514.

209. *See* section B(4)(b), *supra.*

210. *See* Staff Report at 153-162, 276-277, 283-287, 291-295, 297-309.

211. *Id.* at 157, 286, 300-309, 509-510. Clearly, Congress' decision to impose a fifty percent placement requirement upon schools who wish to receive VA money has mitigated this effect to some extent.

212. *Id.* at 290, 311.

213. *Id.* at 288-291, 311-315, 514-516. *See also* Education Amendments of 1976, Pub. L. No. 94-482, 90 Stat. 2081 (1976); Veterans' Education and Employment Act of 1976, Pub. L. No. 94-502, 90 Stat. 2383 (1976); note 171 *supra.* While more recent legislation does serve to strengthen Federally-assisted programs, it does not encompass the universe of schools covered by this rule. As already indicated above, the Commission does not believe that improved performance by state and private accrediting agencies, even if achieved, is sufficient to provide the scope of relief included in this rule since these agencies are not readily equipped to prevent unfair and deceptive practices.

213a. Testimony of Andrew H. Thornton, U.S. Veterans' Administration, January 12, 1978, at 42-44.

214. *See* Staff Report at 315-322.

215. *Id.* at 320-321.

216. *Id.* at 318-326, 516.

217. *See, e.g.,* post-record comment of Cleveland Institute of Electronics, Exhibit Q-29 at 13; post-record comment of LaSalle Extension University, Exhibit Q-58 at 40-45, 79-81, 98-106, 145-50; and post-record comment of National Home Study Council, Exhibit Q-79 at 30-33.

218. *Id.; see also* Staff Report, Part I, section IV(D).

219. 16 C.F.R. Part 234.

220. Nationwide Training Service, Docket C-2814; American Tractor Trailer Training School, Docket D-9025; Career Academy, C-2546; Commercial Programming Unlimited, Docket D-9029; Diesel Truck Driver Training School, Docket C-2759; Driver Training Institute, Docket D-9060; Electronic Computer Programming Institute, Docket D-8952; Lear Siegler, Inc., Docket D-8953; Fuqua Industries, Docket D-2626; Control Data Corp., Docket D-8940; Lafayette Academy, Docket D-8963; LaSalle Extension University, Docket D-5907; MTI Business Schools of Sacramento, Docket C-2500; Nationwide Heavy Equipment Training Service, Docket C-2759; New England Tractor Trailer Training, Docket D-9026; New York School of Computer Technology, Docket D-9029; Tri-State Driver Training, File No. 732-3409; Weaver Airline Personnel School, Docket C-2638; Worldwide Systems, Exhibit C-2683; Jetma Technical Institute, Docket D-9061; Bell & Howell, Docket D-9099; LaSalle Extension University, Docket D-9110.

221. *See* discussion under section c(4)(c) *infra.*

222. Section 438.1(e) of the rule.

223. *See, e.g.,* post-record comment of AICS, Exhibit Q-15 at 92-98; post record comment of NHSC, Exhibit Q-79 at 71-74, 134-35.

224. *Id.*

225. *See, e.g.,* post-record comment of Montana Auto College, Exhibit Q-74 at 1; post-record comment of National Home Study Council, Exhibit Q-79; post-record comment of Ohio School of Broadcast Technique, Exhibit Q-82 at 1.

226. *See* Staff Report, Part II, section VI(C) at 522-25.

227. Indeed, elimination of abuses in the private sector may serve to reduce the incentive of public schools to copy those practices.

228. 16 C.F.R. Part 429.

229. The definition of "Consumer Goods or Services" which are covered by the rule, includes courses of training or instruction. 16 C.F.R. 429 note 1 b.

230. Section B(4)(a)(3), *supra.*

231. *See, e.g.,* of B. Craig, Assistant Attorney General, State of Wisconsin, Tr. 7053; Testimony of B. Ehrlich, Legal Counsel to NHSC and NATTS, Tr. 9392.

232. International Correspondence Schools, sales training materials, "10 Golden Selling Rules," Exhibit E-24. Other examples of this practice are found in the Staff Report, Part I, section V(C) at 151-52.

233. *See* section B(4)(a)(3), *supra.*

234. *See* Presiding Officer's Report at 166.

235. *See* section 438.2(d) of the recommended final rule found at page 346 of the Staff Report.

236. 38 U.S.C.A. § 1786(b).

237. *See, e.g.,* post-record comments of Columbia School of Broadcasting, Exhibit Q-31 at 3; post-record comment of Control Data Institute, Exhibit Q-33 at 12; post-record comment of LaSalle Extension University, Exhibit Q-58 at 145-46, 153-54.

238. *See, e.g.,* post-record comment of ITT Educational Services, Exhibit Q-50 at 17; post-record comment of Penn Technical Institute, Exhibit Q-88; post-record comment of Rhode Island Association of Career and Technical Schools, Exhibit Q-95 at 3-4.

239. *See* section 438.2(c) of the rule.

240. The notice of cooling-off rights contained in Sections 438.5 and 438.6 require such a notification.

241. In the disclosure of cooling-off rights which is mailed to the student pursuant to Section 438.6 of the rule, the school must insert the expiration date of the cooling-off period.

242. Section 438.5 of the Rule.

243. *See* section B(4)(a)(2), *supra.*

244. *Supra,* note 237.

245. 38 U.S.C.A. § 1786(b) and implementing regulations.

246. *See, e.g.,* post-record comment of NHSC, Exhibit Q-79 at 108-109; post-record comment of Rhode Island Association of Career and Technical Schools, Exhibit Q-95 at 3.

247. *See* section C(9), *infra.*

248. *See* section B(5), *supra.*

249. *Id.*

250. *Id.*

251. *See* section B(7), *supra.*

252. *See* section B4(a)(3), *supra.*

253. *See* section B4(a)(2), *supra.*

254. It is well established that an unfair or deceptive act or practice in violation of Section 5 of the Federal Trade Commission Act can arise from the silence of the advertiser as well as from affirmative representations. *See, e.g.,* Fisher & DeRitis, 49 FTC 77 (1952); Stupell Enterprises, Inc. 67 FTC 173 (1965); Bantam Books, Inc. v. FTC, 275 F.2d 680 (2nd Cir. 1960), *cert. denied,* 364 U.S. 819 (1960); Kerrm v. FTC 265 F.2d 246 (10th Cir. 1959) *cert. denied, sub. nom.* Double Eagle Refining Co. v. FTC, 361 U.S. 818 (1959). The school need not have taken any affirmative action to create consumer misbeliefs: a violation of law may result from an advertiser or saleman's silence about a material fact concerning which consumers may make erroneous assumptions. Silence that unfairly harms the economic interests of consumers has with some frequency been the subject of other Federal Trade Commission Rules: The Failure to Post Minimum Research Octane Numbers on Gasoline Dispensing Pumps Constitutes an Unfair Trade Practice and an Unfair Method of Competition, 36 Fed. Reg. 23871 (1971); effective date stayed and plaintiff's motion for summary judgment granted in suit questioning FTC authority to promulgate TRR's National Petroleum Refiners Association v. FTC 340 F. Supp. 1343 (DDC 1972); *reversed* and *remanded,* 482 F.2d 672 (D.C. Cir. 1973), *cert. denied,* 415 U.S. 951 (1974); Trade Regulation Rule, Care Labeling of Textile Wearing apparel, 36 Fed. Reg. 2388 (1972);

Trade Regulation Rule Relating to Incandescent Lamps, 35 Fed. Reg. 11784 (1971); Trade Regulation Rule, Unfair or Deceptive Advertising and Labeling of Cigarettes in Relation to the Health Hazards of Smoking, 29 Fed. Reg. 8324 (1964). These rules were adopted to prevent unfairness due to the absence of information about the nature of the product. The Octane Rule, for example, found that consumers needed essential product information. In this instance, consumers faced a great variety of grades and brands of gasoline, and, absent octane disclosures, they could neither relate gasoline varieties to their automobile requirements so as to avoid engine damage, nor price-shop for gasoline. Lacking octane information, consumers often purchased gasoline of higher expense and octane quality than their automobile required. Again, the Commission found that under the circumstances, failure to disclose octane values was an unfair trade practice and so ordered their disclosure. *See* also Manco Watch Strap Co., Inc., 60 FTC 495 (1962); and Mohawk Refining Corp., 54 FTC 1071, 1077 (1958): "The appeal also contends that no power is conferred under the Act to require revealing statements in cases of non-disclosure unless the challenged practice also is accompanied by false statements of affirmative misrepresentation pertaining to the articles offered. This legal concept is erroneous. The Commission has plenary power to require affirmative disclosure of material facts in situations where seller silence results in deception of purchasers." *Aff'd*, Mohawk Refining Corp. v. FTC, 263 F.2d 818, 820 (3d Cir. 1959), *cert. denied*, 361 U.S. 814 (1959).

255. *See* section B2 *supra*.

256. *See, e.g.*, post-record comment of Columbia School of Broadcasting, Exhibit Q-31 at 2; post-record comment of NATTS, Exhibit Q-77 at 46-7.

257. *See, e.g.*, post-record comment of Missouri Association of Private Career Schools, Exhibit Q-73 at 1; post-record comment of Montana Auto College, Exhibit Q-74 at 3; and post-record comment of The Plaza School, Exhibit Q-90 at 1.

258. Presiding Officer's Report at 123.

259. *See, e.g.*, post-record comment of AICS, Exhibit Q-15 at 52; post-record comment of Control Data Institute, Exhibit Q-33 at 9.

260. *See* section 438.3(a)(5) of the rule.

261. 45 CFR §§ 100-196.

262. 45 CFR § 177.64.

263. 45 CFR § 177.71.

264. B5(b) *supra*.

265. *See* section B2(b) *supra*.

266. *See* sections B1 and B3(a) *supra*.

267. *See* section B7 *supra*.

268. *Id.*

269. *See* sections B3(a) and B7 *supra*.

270. *See* section B3(a)1 *supra*.

271. *See* section B3(a)2 *supra*.

272. *Id.*

273. *See* footnote 254 *supra*.

274. Pfizer Inc. 81 FTC 23 (1972).

275. *Id.* at 64.

276. Section 438.3(b) of the rule.

277. *Id.*

278. *See, e.g.*, post-record comments of ITT Educational Services, Inc., Exhibit Q-50 at 9-10; post-record comment of Mandl School for Medical and Dental Assistants, Exhibit Q-65 at 4.

279. *See, e.g.*, post-record comment of NHSC, Exhibit Q-79 at 57-60, 125-26.

280. *See* Appendices A-C of the rule. In his report the Presiding Officer noted both the desirability of permitting some leeway in this area as well as the potential for abuse. Presiding Officer's Report at 105.

281. *See, e.g.*, post-record comment of AICS, Exhibit Q-15 at 38.

282. *See, e.g.*, post-record comment of AICS, NATTS and NHSC, Exhibit Q-16 at 9.

283. *See, e.g.*, post-record comment of Control Data Institute, Exhibit Q-33 at 5-6.

284. Section 438.7(a) of the rule.

285. 16 C.F.R. section 456.5.

286. Virginia Pharmacy Board v. Virginia Consumer Council 425 U.S. 748 (1976); Bates v. State Bar of Arizona 433 U.S. 350 (1977).

287. Virginia Pharmacy Board v. Virginia Consumer Council 425 U.S. 748, 771-772 and n. 24 (1976).

288. *Id.*

289. *See, e.g.*, post-record comment of AICS, Exhibit Q-15 at 33-34.

290. *See, e.g.*, post-record comment of Consumer Federation of America, Exhibit Q-127 at 22.

291. Commission decisions have held that it is an unfair and deceptive act or practice violating Section 5 of the Federal Trade Commission Act to make an advertising representation without adequate substantiation at the time the claim is first disseminated. See Fedders Corporation, 85 FTC 38, (1975); Firestone Tire and Rubber Co., 81 FTC 398 (1972), *aff'd*, 481 F.2d 246 (6th Cir. 1973), *cert.* denied 414 U.S. 1112 (1973); Pfizer, Inc. 81 FTC 23 (1972). In Pfizer, the Commission concluded that "the making of an affirmative product claim in advertising is unfair to consumers unless there is a reasonable basis for making the claim."

292. See Section B(3)(a), *supra*.

293. The requirement that a school have in its possession at the time it makes a representation, substantiating material which constitutes a reasonable basis for the claim derives from the Commission opinion in Pfizer, *supra*. The Commission in Pfizer indicated that the materials constituting the reasonable basis must exist before the time the representation is made. See 81 FTC at 64.

294. See Section 18(a)(1)(B).

295. The Commission's cooling-off rule is found at 16 C.F.R. Part 429.

296. *See* section B(4)(a)(2), *supra*.

297. *Id.*

298. *See* section B(4)(a)(1), *supra*.

299. *See* section (b)(a)(1), *supra*.

300. *Id.*

301. *See* section B(3)(b)(1), *supra*.

302. *See* section B(4)(a), *supra*.

303. *See* section B(3)(b)(1), *supra*.

304. *See* section B(3)(b)(2) and B(4)(a)(2), *supra*.

305. This approach is by no means novel. In Arthur Murray Studio of Washington v. FTC, 78 FTC 434 (1971), *aff'd*, 458 F.2d 622 (5th Cir. 1972), a Commission order limiting consumers' contractual obligations to a seller to $1500 was upheld. The Commission had found "intense, emotional and unrelenting sales pressure to persuade a prospect or student to sign a long-term contract and that such a person is insistently urged, cajoled, and coerced to sign a contract hurriedly and precipitatedly through use of persistent and emotionally forceful sales presentations which are often of several hours' duration." *Id.* at 439. The Commission justified the remedy of limiting the contractual obligation stating: "The greater the gains or rewards respondents will reap, the greater their incentive will be to engage in these practices or to devise more elaborate methods to accomplish the desired end."

306. *See, e.g.*, post-record comment of LaSalle Extension University, Exhibit Q-58 at 155.

307. *See* Veterans Administration Interpretation, Exhibit R-1.

308. *Id.*

309. *See, e.g.*, post-record comment of International Correspondence Schools, Exhibit Q-49 at 4; post-record comment of TMI Communications, Inc., Exhibit Q-104.

310. *See, e.g.*, post-record comment of Columbia School of Broadcasting, Exhibit Q-31 at 4; post-record comment of Nat'l Association of Cosmetology Schools, Exhibit Q-76 at 4.

311. *See, e.g.*, post-record comment of Cleveland Institute of Electronics, Exhibit Q-29 at 9.

312. Presiding Officer's Report at section VI.

313. *See, e.g.*, post-record comment of ICS, Exhibit Q-49.

314. *See* Staff Report, Part II, section IV(E)(1)(c).

314a. Schools which are doing a good job of placing their graduates should have a better opportunity to attract students than at present, since employment data are not now required to be kept in any comparable fashion. Accordingly, advertising and recruitment costs may decline for some schools.

315. *See* Presiding Officer's Report at 201. Of course, during the transitional period immediately following promulgation of this rule some uncertainty will exist until experience has been gained in the new regulatory environment. However, this will be only a temporary difficulty.

316. *See* Section 438.4 of the rule.

317. *See, e.g.*, post-record comment of NATTS, Exhibit Q-77 at 19-22, 34, 41-42.

318. The right to return equipment under the rule, and receive a pro rata refund on its cost, is not dependent upon the condition of the equipment when returned. The alternative would be to require that the student return the equipment in "usable" of "resalable" condition. Similar enforcement and interpretive problems would attend the imposition of such standards as arise in the determination of "fair market retail value."

319. The refund policies of AICS and NHSC have no equipment exceptions. These policies and those in the states are detailed in the Staff Report, Part I, section VI(B).

320. *See* section 438.4(c) of the rule.

321. *See* Staff Report at 347.

322. *See, e.g.*, post-record comment of Automation Academy, Exhibit Q-19; post-record comment of NHSC, Exhibit Q-79 at 43-44, 86-91.

323. *See, e.g.*, post-record comment of A.B.C. Training Center, Exhibit Q-02 at 1; post-record comment of Advanced Career Training, Exhibit Q-04 at 3; post-record comment of AICS, Exhibit Q-15 at 82; post-record comment of NATTS, Exhibit Q-77 at 32-35.

324. 15 U.S.C. § 2301 *et. seq.*

325. Section 111(c)(2) of Title I of the Magnuson-Moss Act.

326. Section 109 of Title I of the Magnuson-Moss Act.

327. *See* Section B(5)(a), *supra*.

328. These practices are catalogued at sections B (4) and (5), *supra*.

329. Testimony of Bernard Ehrlich, counsel to National Association of Trade and Technical Schools and National Home Study Council, at Tr. 9392.

330. *See, e.g.*, post-record comments of Association of Independent Colleges and Schools, Exhibit Q-15 at 22-24; post-record comment of Laurel Beauty Academy, Exhibit Q-60 at 36; and post-record comment of Southwestern Institute, Inc., Exhibit Q-99.

331. *See, e.g.*, post-record comment of Chester Institute for Technical Education, Exhibit Q-26 at 3; post-record comment of Cleveland Institute of Electronics, Exhibit Q-29 at 6; post-record comment of Control Data Institute, Exhibit Q-33 at 6-7; post-record comment of National Association of Trade and Technical Schools, Exhibit Q-77 at 23-24; and post-record comment of San Francisco Consumer Action, Exhibit Q-160 at 36.

332. Many schools are already under an obligation to give written cooling-off notices to satisfy the existing requirements of the Commission's cooling-off rule (16 CFR Part 429). The rule will, however, impose the additional cost of postage because schools must now mail the disclosure to the student rather than delivering it at the time the student signs the enrollment contract.

333. *See* Staff Report at 252-54; Presiding Officer's Report at 92. Since the placement disclosures are included in the same envelope as the cancellation notice, no additional costs will be incurred.

334. *Id.* at Part I, Section VI(C).

335. *See* Sections 438.5 and 438.6.

336. *See* Appendices A-C to 16 C.F.R. Part 438.

337. *E.g.*, post-record comment of Atlanta College of Business, Exhibit Q-18 at 2-3; post-record comment of ITT Educational Services, Inc., Exhibit Q-50 at 27-28; post-record comment of National Home Study Council, Exhibit Q-79 at 119.

338. The rule categorizes four basic kinds of courses: correspondence courses, residence courses which have fixed-class schedules, residence courses which do not have fixed-class schedules, and conbination courses. Each of these four types of courses is varied by whether the school makes a separate equipment charge for the course.

Subchapter D of Chapter 1 of Title 16 of the Code of Federal Regulations is amended by adding Part 438 to read as follows:

Sec.

438.0 The Rule.
438.1 Definitions.
438.2 Enrollment and cooling-off period.
438.3 Disclosure of graduation and placement rates.
438.4 Cancellation and refund procedures after cooling-off period.
438.5 Contract notice.
438.6 Notice to be mailed.
438.7 Advertising disclaimers.
438.8 Miscellaneous requirements.
438.9 Preemptive effect of the rule.
438.10 Effective date of the rule.

Appendices A through S.

AUTHORITY: 38 Stat 717, as amended (15 U.S.C. 41, *et seq.*).

§ 438.0 The Rule

In connection with the sale or promotion of any course in or affecting commerce, it is an unfair or deceptive act or practice for any school to fail to comply with the requirements set forth in §§ 438.2 through 438.8 of this Part.

§ 438.1 Definitions

For the porposes of this Rule, the following definitions shall apply:

(a) *Prospective student.* A "prospective student" is any person who seeks to enroll in a course but does not include any person whose enrollment has been sponsored or required by a government agency, charitable organization, labor union, school (other than the school in which enrollment is being made), or the person's employer, when that agency, organization, union, school or employer has identified and selected the course to be taken.

(b) *Student.* A "student" is any person who has signed an enrollment contract with a school and not cancelled that contract before the cooling-off period specified in § 438.2 of this rule has ended.

(c) *Course.* (1) The term "course" means a residence, correspondence or combination program of study, education, training, or instruction consisting of a series of lessons, and/or classes which are coordinated, arranged, or packaged to constitute a curriculum or program of instruction and sold collectively, so long as the course purports to prepare or qualify individuals, or improve or upgrade the skills individuals need, for employment in any specific occupation, trade, or in job positions requiring mechanical, technical, business, trade, artistic, supervisory, clerical or other skills.

(2) the term "course" shall not be construed to include high school equivalency courses or general self-improvement courses which do not purport to offer training necessary to obtain employment in a specific skill or trade.

(3) The term "course" shall not be construed to include a program two years in length or longer which consists of accredited college level instruction that culminates in a standard college degree, as defined in 38 U.S.C. 1652(g), as amended.

(4) The term "course" shall not be construed to include any course whose total contract price is less than one hundred dollars ($100), provided that the student has not enrolled in any other course with that school during the calendar year and that the school does not offer any other "course" as defined by this paragraph, for one hundred dollars ($100) or more.

(d) *Total contract price.* The "total contract price" is the total price paid or to be paid by the student for the property or services which are the subject of the enrollment contract, including charges for registration, ancillary services and any finance charges determined in accordance with the Federal Reserve Board's Regulation Z (12 CFR 226.4). Any equipment which the school provides to the student must be included within the total contract price unless the school discloses in the enrollment contract and the notice required by § 438.6 of this rule, the price being charged for the equipment. If the equipment is provided at different points in time during the duration of the contract, the amount being charged for each installment of equipment must be disclosed in the enrollment contract.

(e) *School.* A "school" is any person, partnership or corporation engaged in the operation of a privately owned school, studio, institute, office or other facility which offers residence, correspondence or combination courses.

(f) *Graduate.* A "graduate" is any student who fully completes all of the lessons or classes required by the school and discharges any other requirements or obligations established by the school as prerequisites for completing the full course of study.

(g) *Fail to complete.* Any student who does not fully complete all of the lessons or classes required by the school as constituting the full course of study and who cancels by any of the methods prescribed in § 438.4(a) of the Rule shall be deemed to have "failed to complete" his or her course.

(h) *Actively enrolled.* Any student who is neither a graduate nor has failed to complete his or her course of study shall be deemed to be "actively enrolled."

(i) *Base period.* A "base period" is a six-month period from January 1 through June 30, or from July 1 through December 31.

(j) *Most recent base period.* The "most recent base period" is the latest base period, not including any base period that ended within six months of the time the disclosures are required to be made pursuant to § 438.3(a) of this Rule.

(k) *Most recent graduating class.* The "most recent graduating class" is the class of graduates which most recently completed its course, but does not include any graduating class which completed its course within six months of the time the disclosures required by § 438.3(b)(1) are to be made.

(l) *New Course.* A "new course" is any course which has substantially different course content and occupational objectives from any course previously offered by the school and which has been offered for a period of time less than six (6) months since:

(1) the graduation of one class or the completion of one base period, whichever is later, if a residence course; or

(2) the completion of two (2) base periods, if a correspondence school course.

All courses offered by new schools, which otherwise meet the requirements of paragraph (l) (1) or (2) of this section shall be considered to be new courses.

(m) *Combination course.* A "combination course" is any course that consists of both correspondence lessons and residence classes.

(n) *Constructive notice.* A student shall be deemed to have provided "constructive notice" of his or her intention to withdraw from a course:

(1) For residence courses with fixed class schedules or the equivalent portion of a combination course, by failing to attend residence instructional facilities for a period of five consecutive days on which that class meets;

(2) For residence courses without fixed class schedules, or the equivalent portion of a combination course, by failing to attend residence classes or failing to utilize residence instructional facilities for a period of sixty (60) consecutive days;

(3) For correspondence courses of intruction, or the equivalent portion of combination course, by failing to submit a lesson for a period of 120 consecutive days.

(o) *Course with/without a fixed class schedule.* A "course without a fixed class schedule" is a residence course which does not have precise dates for class admissions, where enrollees do not attend classes by a prearranged schedule, or where there is not a precise graduation date and in which the financial obligation of enrolled students is determined by the number of lessons they have actually attended. Any other residence course shall be deemed to be a "course with a fixed class schedule."

(p) *Enrollment contract.* An "enrollment contract" is any agreement or instrument, however named, which creates or evidences an obligation binding a student to purchase a course from a school, provided that the agreement or instrument is entered into after the effective date of this trade regulation rule.

(q) *Job or earnings claim.* A "job or earnings claim" is any general or specific job or earnings claim.

(r) *General job or earnings claim.* A "general job or earnings claim" is any express claim or representation concerning the general conditions or employment demand in any employment market now or at any time in the future or the amount of salary or earnings generally available to persons employed in any occupation.

(s) *Specific job or earnings claim.* A "specific job or earnings claim" is any express claim or representation concerning the employment opportunities available to students or the demand for students who purchase the school's course, or the amount of salary or earnings available to students who purchase the school's course.

(t) *Media advertisement.* A "media advertisement" is any advertisement disseminated to the public by means of print or broadcast media, including newspapers, magazines, radio, television, posters, or any other means. It does not include promotional materials that are mailed by a school or distributed by its sales representatives.

(u) *Equipment.* The term "equipment" includes any tools or other devices delivered to the student for use in the course but does not include records, tapes, slides, film, books, or any other written course materials.

§ 438.2 Enrollment and Cooling-Off Period.

(a) The school must give the prospective student a completed copy of the enrollment contract at the time the prospective student signs the contract or upon the school's receipt of an enrollment contract completed entirely by mail. The enrollment contract must be written in the same language as the oral sales presentation, if any, made by the school and must contain the name and address of the school.

(b) The school must place on the enrollment contract the explanation of the prospective student's cooling-off rights contained in the notice entitled "CANCELLING THIS CONTRACT" required by § 438.5 of this rule. If the school does not place the "CANCELLING THIS CONTRACT" notice on the front page of the enrollment contract, the school must place on the front page the following notice: "An explanation of your cancellation and refund rights is on page of this contract." This notice must be printed in boldface type.

(c) After the school has accepted the enrollment contract of the prospective student, the school must mail to the prospective student the disclosure of the school's graduation rate, and placement rate if applicable, required by § 438.3 of this rule. In the same envelope used to mail that notice to the prospective student, the school must also mail to the prospective student, on a separate sheet of paper, the notice entitled "HOW TO CANCEL THIS CONTRACT" required by § 438.6 of this rule.

(d) If a prospective student cancels the enrollment contract during the period described in the notices required by § 438.5 and § 438.6 the school must refund all payments made by the prospective student and cancel and return any evidence of indebtedness within fourteen days after receiving any notice of cancellation. If a school fails to comply with § 438.5 and § 438.6, it shall not retain any money or evidence of indebtedness from a prospective student for that course.

(e) If a residence school provides a prospective student with equipment during the cooling-off period, it must disclose the amount being charged for that equipment in the notice of cooling-off rights required by § 438.5 and § 438.6 of the rule. If the prospective student cancels his or her enrollment contract during the cooling-off period, and returns the equipment to the school within twenty (20) days from the date of cancellation, no charge may be made by the school for the equipment. If, however, the student fails to return the equipment within the twenty (20) day period, the school may retain the amount disclosed.

Any equipment provided to a student by a correspondence school during the cooling-off period, may be retained by the student without charge if the student cancels during the cooling-off period.

§ 438.3 Disclosure of graduation and placement rates.

(a) On the Disclosure Form entitled "How Our Students Are Doing", described by paragraph (e) of this Section, a school shall disclose its graduation rate for the course that is the subject of the enrollment contract in the following manner:

(1) For residence courses with fixed class schedules, the school shall disclose these figures for its most recent graduating class:

(i) the number of students;

(ii) the number and percentage of students who graduated;

(iii) the number and percentage of students who failed to complete;

Provided that, if a course has more than one graduating class during its most recent base period (as defined in § 438.1(j)), the school may disclose its graduation rate in accordance with paragraph (a)(2).

(2) For residence courses without fixed class schedules, the school shall disclose these figures for individuals who became students during the school's most recent two base periods or most recent base period if individuals only became students during that period:

(i) the number of students;

(ii) the number and percentage of those students who graduated;

(iii) the number and percentage of those students who failed to complete during that time;

(iv) the number and percentage of those students who remained actively enrolled at the end of that time.

(3) For correspondence or combination courses, the school shall disclose these figures for individuals who became students during the school's most recent four base periods, or most

recent two or three base periods if individuals only became students during those periods:

(i) the number of students;

(ii) the number and percentage of those students who graduated;

(iii) the number and percentage of those students who failed to complete during that time;

(iv) the number and percentage of those students who remained actively enrolled at the end of that time.

(4) For new courses (as defined in § 438.1(l)), the school shall make the following disclosure:

Since this course is new, we are not able to give you information on the graduation or placement rates of our students, or the amount of money you might earn after completing this course. As an alternative, we suggest you talk to a job counselor or state employment office about your chances of finding a job in the field we train you for. They will have current information on job opportunities in the area where you live. In addition, they can offer you information on starting salaries and requirements for prior work experience.

Provided, however, that a new course with respect to which no general job or earnings claim is made may make the following disclosure:

Since this course is new, we are not able to give you information on the graduation rate of our students.

(5) A school may, at its option, include the following statement on the Disclosure Form in the manner shown on Appendices A–C.

In evaluating these figures, you should know that students may drop out of a course for a variety of reasons. These range from dissatisfaction with the course to inability to do the work. Other students drop out of school for personal reasons.

(b) If a school makes a job or earnings claim for a course other than a new course, the school shall disclose the following placement information on the Disclosure Form entitled "How Our Students Are Doing," described by paragraph (e) of this section for each course that is the subject of the enrollment contract:

(1) For residence courses with fixed class schedules, the school shall disclose these figures for its most recent graduating class:

(i) the number and percentage of graduates who obtained employment in jobs for which the course prepared them within four months of leaving the course;

(ii) the number and percentage of these graduates by their yearly gross salary, in increments of two thousand dollars ($2,000);

(iii) the number and percentage of these graduates who refused to provide salary information.

Provided that, if a course has more than one graduating class during its most recent base period (as defined in § 438.1(j)), the school may disclose its placement rate in accordance with paragraph b(2).

(2) For residence courses without fixed class schedules, the school shall disclose these figures for individuals who became students during the school's most recent two base periods, or most recent base period if individuals only became students during that period:

(i) the number and percentage of graduates who, within four months of leaving the course, obtained employment in jobs for which the course prepared them;

(ii) the number and percentage of these graduates by their yearly gross salary, in increments of two thousand dollars ($2,000);

(iii) the number and percentage of these graduates who refused to provide salary information.

(3) For correspondence or combination courses, the school shall disclose these figures for individuals who became students during the school's most recent four base periods or most recent two or three base periods if individuals only became students during those periods:

(i) the number and percentage of graduates who, within four months of leaving the course, obtained employment in jobs for which the course prepared them;

(ii) the number and percentage of these graduates by their yearly gross salary, in increments of two thousand dollars ($2,000);

(iii) the number and percentage of these graduates who refused to provide salary information.

(4) A school may, at its option, include the following statement on the Disclosure Form in the manner shown in Appendices A–C:

In evaluating our record, remember not all of our students took this course to get a job in the field of [*school to insert area of training*]. Also, we were unable to reach some of our graduates to see if they got jobs. So, our placement percentage might be understated.

(c) The disclosure specified by paragraph (b) of this section must be based on the school's actual knowledge of its students' experiences. Actual knowledge shall be verified, at a minimum, by a list that includes the following information for each student who is counted as obtaining employment in a job for which the course prepared him or her:

(1) the student's name and address (or telephone number);

(2) the employer's name;

(3) the name or title of the job obtained;

(4) information that indicates that the job was obtained within four (4) months of leaving the course; and

(5) the student's annual gross salary expressed in increments of two thousand dollars ($2,000), or an indication of the student's refusal to provide such salary information.

(d) No school shall make any specific job or earnings claim for a new course.

(e) The information required or permitted to be disclosed under paragraphs (a) and (b) of this section shall be contained in a Disclosure Form entitled "How Our Students Are Doing." The Disclosure Form shall contain no other information or representations. The name of the school and the course shall appear at the top of form, immediately below the title of the form. The format of this notice must conform to the examples set forth in Appendices A–C, including the same capitalization and *underlining* of words. This form must be mailed to all prospective students who have signed enrollment contracts. It must be mailed in the same envelope as the notice explaining the prospective student's cancellation, cooling-off and refund rights required by § 438.6 of this rule. No other materials may be included in that envelope.

(f) If a school makes a general job or earnings claim or a specific job or earnings claim that is not substantiated by the Disclosure Form required by paragraph (e) above, the school must possess a reasonable basis for each such claim at all times that the claim is made and the school must not know or have reason to know of facts which would make the claim inapplicable to the school, its enrollees or a particular geographical area served by the school. A "reasonable basis" shall consist of a statistically valid and reliable survey which substantiates the claim.

(1) Nothing in paragraph (f) above shall be construed as prohibiting schools from making jobs or earnings claims which are substantiated by projections from the "Occupational Outlook Handbook" published by the Bureau of Labor Statistics or by similar projections published by other federal or state agencies. However, when such claims are contained in nonmedia advertising, the schools must clearly and conspicuously disclose in immediate conjunction with the claim, any limitations, restrictions or caveats accompanying or made applicable to those projections in their original source.

(2) A school shall maintain records adequate to disclose the facts upon which each claim covered by this paragraph is based. Such records shall be maintained for three years from the date the claim is made, and, after compliance with any applicable federal law concerning the privacy or confidentiality of student records, shall be made available for inspection and copying by Federal Trade Commission

officials upon reasonable notice and during regular business hours.

§ 438.4 Cancellation and Refund Procedures After Cooling-Off Period.

(a) After the cooling-off period provided for in § 438.2 has ended, a student may cancel his or her enrollment in the course by writen notification to the school. Cancellation by the student is effective on the date the student mails or delivers written notification to the school or on the date that the student gives the school constructive notice (as defined in § 438.1(n)) of his or her intention to withdraw from the course.

(b) If a student gives the school written notice of his or her intention to remain enrolled in a course, the time period for measuring constructive notice will begin anew from the date of the written notice. Any previous cancellation by virtue of the student's constructive notice will not be effective if the student provides this written notice of his or her intention to remain enrolled.

(c) If a student cancels his or her enrollment contract after the cooling-off period, the school shall not receive, demand, or retain more than a pro rata portion of the total contract price plus a registration fee in the amount of $25 or 10% of the total contract price (not to exceed $75) whichever is greater. This total obligation shall not be more than the total contract price. The pro rata portion shall be calculated in the following manner:

(1) Courses for which the school does not make any separate equipment charge:

(i) the school must calculate the number of classes or hours held in a residence course with a fixed class schedule, the number of classes or hours attended by the student at a residence course without a fixed class schedule, or the lessons sent in by the student for a correspondence course before the student's cancellation;

(ii) this number must be divided by the total number of classes, hours or lessons required to complete the course; and

(iii) the resulting number shall be multiplied by the total contract price.

(2) Courses for which the school does make a separate equipment charge:

(i) the school must calculate the number of classes or hours held in a residence course with a fixed class schedule, the number of classes or hours attended by the student at a residence course without a fixed class schedule, or the lessons sent in by the student for a correspondence course before the student's cancellation;

(ii) this number must be divided by the total number of classes, hours or lessons required to complete the course; and

(iii) if a student returns to the school within 21 days of withdrawing from a course all of the equipment provided by the school, the school must add the cost of this equipment (as disclosed in § 438.1(d)) to the total contract price. This figure should then be multiplied by the figure calculated in paragraph (2)(ii) above.

If the student does not return the equipment within 21 days to the school, the school may retain the full amount of the equipment charge plus the pro rata portion of the total contract price.

(3) For combination courses, the school must designate separate prices for the residence and correspondence portions of the course in the enrollment contract, and the pro rata portion of the total contract price shall be the sum of the separate pro rata obligations for the residence portion and the correspondence portion.

(d) If a school had not made a separate charge for equipment, the school must within twenty-one (21) days of the date of cancellation provide the student with the correct refund payment, if any, or must cancel that portion of the student's indebtedness that exceeds the amount due to the school. *However,* if a school had made a separate charge for equipment provided to the student and the student has cancelled by constructive notice (see § 438.1(n) for a definition of this term) the school must send the following notice to the student:

Dear ————: Our records show that you have not [submitted lessons] [attended classes] for [school insert (120) for correspondence courses, (5) for residence courses with fixed class schedules or (60) for residence courses without fixed schedules] consecutive days, so we have canceled your contract. If you want to stay in this course fill in the information at the bottom of this letter and return it to us.

If you decide to cancel this contract with us, you can keep the equipment we sent you or return it to us. If you keep this equipment, you will owe us the total cost. This comes to ————. Here is how we figured this amount:

Description of Equipment	Delivery Date	Cost
Ohmmeter.....	[Date or installment number].	$32.10

If you decide to return this equipment, you will receive a partial refund of the cost based on the percentage of the course you completed before you dropped out. But to get this refund, you must return this equipment to us within twenty-one (21) days from the date of this letter. Send this equipment to the following address:

Before making a decision on whether or not to return this equipment, you should review the section of your contract that explains how we settle your account.

School ————

Address ————

Dear Sirs: I want to continue taking this course. Please do not cancel my contract.

.....
Date

.....
Student's Signature

In the event that a school has made a separate charge for equipment, the school must provide the student with the correct refund payment, or cancel the excess indebtedness, within 42 days from the date it mails the above notice to the student.

§ 438.5 Contract notice.

(a) The school must include in the enrollment contract the following notice. The same method of capitalization and underlining of words used in the notices set forth below must be used by the school. All subtitles in the notices must be in boldface type. The title of the notice "CANCELLING THIS CONTRACT" must be in all capitals with boldface type.

(1) For correspondence courses without a separate equipment charge, the notice set forth in Appendix D;

(2) For correspondence courses with a separate equipment charge, the notice set forth in Appendix E;

(3) For residence courses without fixed class schedules without a separate equipment charge, the notice set forth in Appendix F;

(4) For residence courses without fixed class schedules with a separate equipment charge, the notice set forth in Appendix G;

(5) For residence courses with fixed class schedules without a separate equipment charge, the notice set forth in Appendix H;

(6) For residence courses with fixed class schedules with a separate equipment charge, the notice set forth in Appendix I;

(7) For combination courses without a separate equipment charge, the notice set forth in Appendix J; and

(8) For combination courses with a separate equipment charge, the notice set forth in Appendix K.

(b) If a residence school has classes of varying length and calculates its students' financial obligations on an hourly basis the school must substitute the word "hour" for the word "class" in the notices required by paragraphs (a)(3) through (a)(8).

§ 438.6 Notice to be mailed.

The school must mail to the prospective student the following notice after the school has accepted the enrollment contract of the prospective student. The same method of capitalization and underlining of words used in notices set forth below must be used by the school. All subtitles in the notice must be in boldface type. The

title of the notice "HOW TO CANCEL YOUR CONTRACT" shall be in all capitals with boldface type.

(a) For correspondence courses without a separate equipment charge, the notice set forth in Appendix L;

(b) For correspondence courses with a separate equipment charge, the notice set forth in Appendix M;

(c) For residence courses without fixed class schedules without a separate equipment charge, the notice set forth in Appendix N;

(d) For residence courses without fixed class schedules with a separate equipment charge, the notice set forth in Appendix O;

(e) For residence courses with fixed class schedules without a separate equipment charge, the notice set forth in Appendix P;

(f) For residence courses with fixed class schedules with a separate equipment charge, the notice set forth in Appendix Q;

(g) For combination courses without a separate equipment charge, the notice set forth in Appendix R;

(h) For combination courses with a separate equipment charge, the notice set forth in Appendix S.

§ 438.7 Advertising Disclaimers

(a) If a school makes any job or earnings claims for any course in a media advertisement, the school must include the following disclaimer in this advertisement:

Graduation from this course does not insure that you will get a job. To find out how our graduates have done, send for our job placement record.

(b) If a school makes any written job or earnings claims about any course, other than a media advertisement, the school must include in that document full disclosures of the school's graduation and placement rates require by Section 438.3 (a) and (b).

(c) If a school makes any general job or earnings claims for a new course, that school must make the following disclosure in lieu of those required in paragraphs (a) and (b):

(1) in media advertisements:

Since this course is new, we are not able to tell you about the experience of our students in getting jobs.

(2) all other, non-media, advertisements:

Since this course is new, we are not able to give you information on the graduation or placement rates of our students, or the amount of money you might earn after completing this course. As an alternative, we suggest you talk to a job counselor or state employment office about your chances of finding a job in the field we train you for. They will have current information on job opportunities in the area where you live. In addition, they can offer you information on starting salaries and requirements for prior work experience.

§ 438.8 Miscellaneous requirements.

(a) The school may not include in the enrollment contract or any other document a waiver of any of the rights or obligations created by this rule. No oral waiver of any of these rights or obligations shall be effective.

(b) The notices and disclosures required by § 438.5 and § 438.6 must be written in a least 10-point type, and except as indicated in the Appendices required by those sections, must not be in all capital letters. The notices must be written in the same language as the oral sales presentation, if any, made by the school.

§ 438.9 Preemptive effect of the rule

This trade regulation rule preempts any provision of any state law, rule, or regulation which is inconsistent with or otherwise frustrates the purpose of the provisions of this trade regulation rule, except where the Commission has exempted such a state or local law, rule or regulation. If, upon, application of any appropriate state or local governmental agency, the Commission determines that the state statutory or regulatory provision affords greater protection to students than the comparable provision of the Commission's rule then the state requirement will be applicable to the extent specified in the Commission's determination on the exemption application. Any exemption application filed under this section should address the following factors:

(a) the substantive protection offered by the comparable state provision;

(b) the readability of the consumer notices used to explain to the student or prospective student his or her rights under the provision (where applicable);

(c) the availability of self-help remedies to the student or prospective student to enforce his or her rights (*e.g.*, the existence of contractual rights through mandated contractual language); and

(d) the forms of relief and redress available to enforce the state provision.

Any Commission decision to grant an exemption request from a state or local governmental entity shall be conducted under Section 553 of title 5, United States Code.

§ 438.10 Effective date of the rule.

The effective date of the Rule will be January 1, 1980. Disclosures required by § 438.3 shall be made on the basis of base periods beginning January 1, 1979. Until such time has elapsed as to permit schools to make disclosures on the basis of the minimum number of base periods required for them under § 438.3, such disclosures shall be made on the basis of the number of base periods actually completed (plus six months) during the period beginning January 1, 1979.

APPENDIX A

CORRESPONDENCE COURSE

How Our Students Are Doing

[School Name] _____
Course _____

This form has been prepared to give students and their families important background information to use in evaluating the performance of our school.

Graduation Record—From ——— *To* ———

Number of students enrolled	100	100%
50 students graduated	50	50%
30 students did not finish the course	30	30%
20 students are still enrolled	20	20%

In evaluating these figures, you should know that students may drop out of a course for a variety of reasons. These range from dissatisfaction with the course to inability to do the work. Other students drop out of school for personal reasons, such as poor health.

Placement and Earnings Record

Since we made job placement or earnings claims in promoting this course, we have prepared our record in these areas for your review. As the Graduation Record pointed out, 50 students graduated from this course from ——— to ———. We found that 38 or 76% of these 50 graduates got jobs in the field of ——— within 4 months of their graduation. A breakdown of the starting salaries for these graduates is summarized below:

Starting salary	Number of students	Percent of total
$6000-$7999	9	24
$8000-$9999	11	29
$10,000-$11,999	7	18
$12,000-$13,999	9	24
Refused to tell	2	5
	38	100%

In evaluating our record, remember not all of our students took this course to get a job in the field of ———. Also, we were unable to reach some of our graduates to see if they got jobs. So, our placement percentage might be understated.

APPENDIX B

RESIDENCE COURSE WITHOUT FIXED-CLASS SCHEDULES

How Our Students Are Doing

[School Name] _____
Course _____

This form has been prepared to give students and their families important background information to use in evaluating the performance of our school.

Graduation Record—
From ——— To ———

Number of students enrolled	100	100%
50 students graduated	50	50%
30 students did not finish the course	30	30%
20 students are still enrolled	20	20%

In evaluating these figures, you should know that students may drop out of a course for a variety of reasons. These range from dissatisfaction with the course to inability to do the work. Other students drop out of school for personal reasons, such as poor health.

Placement and Earnings Record

Since we made job placement or earnings claims in promoting this course, we have prepared our record in these areas for your review. As the Graduation Record pointed out, 50 students graduated from this course from ——— to ———. We found that 38 or 76% of these 50 graduates got jobs in the field of ——— within 4 months of their graduation. A breakdown of the starting salaries for these graduates is summarized below:

Starting salary	Number of students	Percent of total
$6,000—$7,999	9	24
$8,000–$9,999	11	29
$10,000–$11,999	7	18
$12,000–$13,999	9	24
Refused to tell	2	5
	38	100

In evaluating our record, remember not all of our students took this course to get a job in the field ———. Also, we were unable to reach some of our graduates to see if they got jobs. So, our placement percentage might be understated.

APPENDIX C

RESIDENCE COURSES WITH FIXED-CLASS SCHEDULES

How Our Students Are Doing

[School Name] ———
Course ———

This form has been prepared to give students and their families important background information to use in evaluating the performance of our school.

Graduation Record—For the Class Graduating on ———

Number of students enrolled	100	100%
60 students graduated	60	60%
40 students did not finish the course	40	40%

In evaluating these figures, you should know that students may drop out of a course for a variety of reasons. These range from dissatisfaction with the course to inability to do the work. Other students drop out of school for personal reasons, such as poor health.

Placement and Earnings Record

Since we made job placement or earnings claims in promoting this course, we have prepared our record in these areas for your review. As the Graduation Record pointed out, 60 students graduated from this course from ——— to ———. We found that 38 or 63% of these 60 graduates got jobs in the field of ——— within 4 months of their graduation. A breakdown of the starting salaries for these graduates is summarized below:

Starting salary	Number of students	Percent of total
$6,000–$7,999	9	24
$8,000–$9,999	11	29
$10,000–$11,999	7	18
$12,000–$13,999	9	24
Refused to tell	2	5
	38	100%

In evaluating our record, remember not all of our students took this course to get a job in the field of ———. Also, we were unable to reach some of our graduates to see if they got jobs. So, our placement percentage might be understated.

APPENDIX D

CANCELLING THIS CONTRACT

This notice explains your rights and responsibilities concerning cancellation of this contract.

Automatic Cancellation

This contract is automatically cancelled and you do not owe us any money if the following two (2) forms are not mailed to you.

How Our Students Are Doing

Tells you how many students complete the course [for schools making job or earnings claims insert "and the placement rate of our graduates"]

How To Cancel Your Contract

Provides information on how to cancel this contract. Also, this form describes how we figure what is owed for students who have already begun the course.

Your Right To Cancel

If you decide not to take this course, you have fourteen (14) days to cancel this contract and get a full refund. The fourteen days start on the day we mail these forms. The *How To Cancel Your Contract* form shows you when the fourteen days are up. To cancel, you must sign the bottom of this contract or the *How To Cancel Your Contract* form we are sending you, put on the date and mail this contract or the form to us no later than midnight of the fourteenth day.

You can also cancel this contract by sending us a letter no later than midnight of the fourteenth day. Be sure to date and sign your letter. If possible, keep a copy. Your contract will be cancelled the day you mail this letter.

Settling Your Account

If you cancel this contract before the fourteen (14) day period is over, we will refund any money you have paid us within two (2) weeks from the day we receive your cancellation.

If you cancel this contract after the fourteen (14) day period, you may owe us some money. To determine the exact amount, we multiply the price for each lesson by the number of lessons you sent in and add a $—— registration fee. We compare this to what you have paid to see if you are entitled to a refund or owe us additional money. The price for each lesson is figured by dividing the $—— course cost by the —— lessons in the course. If you are entitled to a refund, we will send it to you within twenty one (21) days from the day you cancel.

If you do not send in any lessons for 120 straight days at any point during the course, we will cancel your contract. But you will be given an opportunity to apply for reinstatement by writing to us that you wish to continue.

I have changed my mind and want to cancel this contract.

Date ———
Student's Signature ———

APPENDIX E

CANCELLING THIS CONTRACT

This notice explains your rights and responsibilities concerning cancellation of this contract.

Automatic Cancellation

This contract is automatically cancelled and you do not owe us any money if the following two (2) forms are not mailed to you.

How Our Students Are Doing

Tells you how many students complete the course [for schools making job or earnings claims insert "and the placement rate of our graduates"]

How To Cancel Your Contract

Provides information on how to cancel this contract. Also, this form describes how we figure what is owed for students who have already begun the course.

Your Right To Cancel

If you decide not to take this course, you have fourteen (14) days to cancel this contract and get a full refund. The fourteen days start on the day we mail these forms. The *How To Cancel Your Contract* form shows you when the fourteen days are up. To cancel, you must sign the bottom of this contract or the *How To Cancel Your Contract* form we are sending you, put on the date and mail this contract or the form to us no later than midnight of the fourteenth day.

You can also cancel this contract by sending us a letter no later than midnight of the fourteenth day. Be sure to date and sign your letter. If possible, keep a copy. Your contract will be cancelled the day you mail this letter.

Equipment

A description of the equipment we will send you and the installment charges are summarized below:

Item	Delivery date	Cost
Ohmmeter	1/13/78 (or lesson	$32.00
Circuit board	2/31/78 number)	$20.00

Settling Your Account

If you cancel this contract before the fourteen (14) day period is over, we will refund any money you have paid us. This money will be paid within two (2) weeks from date your contract is cancelled.

If you cancel this contract after the fourteen (14) day period, you may owe us some money. Keep in mind that if you return the equipment we delivered, you pay for a proportion of its cost. Your payment is based

on the number of lessons you sent in. When you keep the equipment, you pay for its full cost.

If you return the equipment we delivered, we add the $—— course cost and the cost of the equipment delivered. We divide this total by the ——— lessons in the course to get a cost per lesson.

We multiply this cost per lesson by the number of lessons you sent in and add a $—— registration fee. The total is compared to what you paid to see if you are entitled to a refund or owe us additional money.

If you fail to return this equipment within twenty-one (21) days from the date this contract is cancelled, we divide the $—— course cost by the lessons in the course. This gives us a price per lesson of $——. We multiply this price per lesson by the number of lessons you sent in. Finally, we add the cost of the unreturned equipment and a $—— registration fee. The total is compared to what you paid to see if you are entitled to a refund or owe us additional money. If you are entitled to a refund, we will send it to you within twenty-one (21) days from the day you cancel.

If you do not send in any lessons for 120 straight days at any point during the course, we will cancel your contract. But you will be given an opportunity to apply for reinstatement by writing to us that you wish to continue.

I have changed my mind and want to cancel this contract.

Date ———————————

Student's Signature ———————————

APPENDIX F

CANCELLING THIS CONTRACT

This notice explains your rights and responsibilities concerning cancellation of this contract.

Automatic Cancellation

This contract is automatically cancelled and you do not owe us any money if the following two (2) forms are not mailed to you.

How Our Students Are Doing

Tells you how many students complete the course [for schools making job or earnings claims insert "and the placement rate of our graduates"]

How To Cancel Your Contract

Provides information on how to cancel this contract. Also, this form describes how we figure what is owed for students who have already begun the course.

Your Right To Cancel

If you decide not to take this course, you have fourteen (14) days to cancel this contract and get a full refund. The fourteen days start on the day we mail these forms. The *How To Cancel Your Contract* form shows you when the fourteen days are up. To cancel, you must sign the bottom of this contract or the *How To Cancel Your Contract* form we are sending you, put on the date and mail this contract or the form to us no later than midnight of the fourteenth day.

You can also cancel this contract by sending us a letter no later than midnight of the fourteenth day. Be sure to date and sign your letter. If possible, keep a copy. Your contract will be cancelled the day you mail this letter.

Settling Your Account

If you cancel this contract before the fourteen (14) day period is over, we will refund any money you have paid us within two (2) weeks from the day we receive your cancellation.

If you cancel this contract after the fourteen (14) day period, you may owe us some money. To determine the exact amount, we multiply the price for each class by the number of classes you attend and add a $—— registration fee. We compare this to what you paid to see if you are entitled to a refund or owe us additional money. The price for each class is figured by dividing the $—— course cost by the ——— classes in the course. If you are entitled to a refund, we will send it to you within twenty one (21) days from the day you cancel.

If you do not attend classes for 60 straight days at any point during the course, we will cancel your contract. But you will be given an opportunity to apply for reinstatement by writing to us that you wish to continue.

I have changed my mind and want to cancel this contract.

Date ———————————

Student's Signature ———————————

APPENDIX G

CANCELLING THIS CONTRACT

This notice explains your rights and responsibilities concerning cancellation of this contract.

Automatic Cancellation

This contract is automatically cancelled and you do not owe us any money if the following two (2) forms are not mailed to you.

How our students are doing

Tells you how many students complete the course [for schools making job or earnings claims insert "and the placement rate of our graduates"]

How To Cancel Your Contract

Provides information on how to cancel this contract. Also, this form describes how we figure what is owed for students who have already begun the course.

Your Right To Cancel

If you decide not to take this course, you have fourteen (14) days to cancel this contract and get a full refund. The fourteen days start on the day we mail these forms. The *How To Cancel Your Contract* form shows you when the fourteen days are up. To cancel, you must sign the bottom of this contract or the *How To Cancel Your Contract* form we are sending you, put on the date and mail this contract or the form to us no later than midnight of the fourteenth day.

You can also cancel this contract by sending us a letter no later than midnight of the fourteenth day. Be sure to date and sign your letter. If possible, keep a copy. Your contract will be cancelled the day you mail this letter.

Equipment

A description of the equipment we will provide you with and the charges are summarized below:

Item	Delivery date	Cost
Ohmmeter	1/31/78 (or class	$32.00
Circuit board	2/31/78 number)	$20.00

Settling Your Account

If you cancel this contract before the fourteen (14) day period is over, we will refund any money you have paid us within two (2) weeks from the day we receive your cancellation. Any equipment we provided you for this course must be returned to us within twenty (20) days from the day you cancel this contract or you will owe us the amount shown above.

If you cancel this contract after the fourteen (14) day period, you may owe us some money. Keep in mind that if you return the equipment we delivered, you pay for a proportion of its cost. Your payment is based on the number of classes you attend. When you keep the equipment, you pay for its full cost.

If you return the equipment we delivered, we add the $—— course cost and the cost of the equipment delivered. We divide this total by the ——— classes in the course to get a cost per class. We multiply this cost per class by the number of classes you attended and add a $—— registration fee. The total is compared to what you paid to see if you are entitled to a refund or owe us additional money.

If you fail to return this equipment within twenty one (21) days from the date this contract is cancelled, we divide the $—— course cost by the ——— classes in the course. This gives us a price per class of $——. We multiply this price per class by the number of classes you attended. Finally, we add the cost of the unreturned equipment and $—— registration fee. The total is compared to what you paid to see if you are entitled to a refund or owe us additional money. If you are entitled to a refund, we will send it to you within twenty one (21) days from the day you cancel.

If you do not attend classes for 60 straight days at any point during the course, we will cancel your contract. But you will be given an opportunity to apply for reinstatement by writing to us that you wish to continue.

I have changed my mind and want to cancel this contract.

Date ———————————

Student's Signature ———————————

APPENDIX H

CANCELLING THIS CONTRACT

This notice explains your rights and responsibilities concerning cancellation of this contract.

Automatic Cancellation

This contract is automatically cancelled and you do not owe us any money if the following two (2) forms are not mailed to you.

How Our Students Are Doing

Tells you how many students complete the course [for schools making job or earn-

ings claims insert "and the placement rate of our graduates"].

How To Cancel Your Contract

Provides information on how to cancel this contract. Also, this form describes how we figure what is owed for students who have already begun the course.

Your Right To Cancel

If you decide not to take this course, you have fourteen (14) days to cancel this contract and get a full refund. The fourteen days start on the day we mail these forms. The *How To Cancel Your Contract* form shows you when the fourteen days are up. To cancel, you must sign the bottom of this contract or the *How To Cancel Your Contract* form we are sending you, put on the date and mail this contract or the form to us no later than midnight of the fourteenth day.

You can also cancel this contract by sending us a letter no later than midnight of the fourteenth day. Be sure to date and sign your letter. If possible, keep a copy. Your contract will be cancelled the day you mail this letter.

Settling Your Account

If you cancel this contract before the fourteen (14) day period is over, we will refund any money you have paid us within two (2) weeks from the day we receive your cancellation.

If you cancel this contract after the fourteen (14) day period, you may owe us some money. To determine the exact amount, we multiply the price for each class by the number of classes held before you cancel and add a $—— registration fee. We compare this to what you paid to see whether you are entitled to a refund or owe us additional money. The price for each class is figured by dividing the $—— course cost by the ——— classes in the course. If you are entitled to a refund we will send it to you within twenty-one (21) days from the day you cancel.

If you do not attend classes for five (5) straight days on which classes meet, we will cancel your contract. But you will be given an opportunity to apply for reinstatement by writing to us that you wish to continue.

I have changed my mind and want to cancel this contract.

Date ———————————————

Student's Signature ———————————————

APPENDIX I

CANCELLING THIS CONTRACT

This notice explains your rights and responsibilities concerning cancellation of this contract.

Automatic Cancellation

This contract is automatically cancelled and you do not owe us any money if the following two (2) forms are not mailed to you.

How Our Students Are Doing

Tells you how many students complete the course [for schools making job or earnings claims insert "and the placement rate of our graduates"].

How To Cancel Your Contract

Provides information on how to cancel this contract. Also, this form describes how we figure what is owed for students who have already begun the course.

Your Right To Cancel

If you decide not to take this course, you have fourteen (14) days to cancel this contract and get a full refund. The fourteen days start on the day we mail these forms. The *How To Cancel Your Contract* form shows you when the fourteen days are up. To cancel, you must sign the bottom of this contract or the *How To Cancel Your Contract* form we are sending you, put on the date and mail this contract or the form to us no later than midnight of the fourteenth day.

You can also cancel this contract by sending us a letter no later than midnight of the fourteenth day. Be sure to date and sign your letter. If possible, keep a copy. Your contract will be cancelled the day you mail this letter.

Equipment

A description of the equipment we will provide you with and the charges are summarized below:

Item	Delivery date	Cost
Ohmmeter.....	1/31/78 (or class.....	$32.00
Circuit board.....	2/31/68 number)	$20.00

Settling Your Account

If you cancel this contract before the fourteen (14) day period is over, we will refund any money you have paid us within two (2) weeks from the day we receive your cancellation. Any equipment we provided you for this course must be returned to us within twenty (20) days from the day you cancel this contract or you will owe us the amount shown above.

If you cancel this contract after the fourteen (14) day period, you may owe us some money. Keep in mind that if you return the equipment we delivered, you pay for a proportion of its cost. Your payment is based on the number of classes held before you cancel. When you keep the equipment, you pay for its full cost.

If you return the equipment we delivered, we add the $—— course cost and the cost of the equipment delivered. We divide this total by the ——— classes in the course to get a cost per class. We multiply this cost per class by the number of classes held before you cancel and add a $—— registration fee. The total is compared to what you paid to see if you are entitled to a refund or owe us additional money.

If you fail to return this equipment within twenty one (21) days from the date this contract is cancelled, we divide the $—— course cost by the ——— classes in the course. This gives us a price per class of $——. We multiply this price per class by the number of classes held before you cancel. Finally, we add the cost of the unreturned equipment and a $—— registration fee. The total is compared to what you paid to see if you are entitled to a refund or owe us additional money. If you are entitled to a refund, we will send it to you within twenty one (21) days from the day you cancel.

If you do not attend classes for five (5) straight days on which classes meet, we will cancel your contract. But you will be given an opportunity to apply for reinstatement by writing to us that you wish to continue.

I have changed my mind and want to cancel this contract.

Date ———————————————

Student's Signature ———————————————

APPENDIX J

CANCELLING THIS CONTRACT

This notice explains your rights and responsibilities concerning cancellation of this contract.

Automatic Cancellation

This contract is automatically cancelled and you do not owe us any money if the following two (2) forms are not mailed to you.

How Our Students Are Doing

Tells you how many students complete the course [for schools making job or earnings claims insert "and the placement rate of our graduates"]

How To Cancel Your Contract

Provides information on how to cancel this contract. Also, this form describes how we figure what is owed for students who have already begun the course.

Your Right To Cancel

If you decide not to take this course, you have fourteen (14) days to cancel this contract and get a full refund. The fourteen days start on the day we mail these forms. The *How To Cancel Your Contract* form shows you when the fourteen days are up. To cancel, you must sign the botton of this contract or the *How To Cancel Your Contract* form we are sending you, put on the date and mail this contract or the form to us no later than midnight of the fourteenth day.

You can also cancel this contract by sending us a letter no later than midnight of the fourteenth day. Be sure to date and sign your letter. If possible, keep a copy. Your contract will be cancelled the day you mail this letter.

Settling Your Account

If you cancel this contact before the fourteen (14) day period is over, we will refund any money you have paid us within two (2) weeks from the day we receive your cancellation.

If you cancel this contract after the fourteen (14) day period you may owe us some money. To determine the exact amount, we multiply the price for each lesson in the home study portion of this course by the number of lessons you sent in. The price for each lesson is figured by dividing the $—— cost of the home study portion of this course by the —— lessons in the part of the course. We add to this the amount you owe us for the residence portion of this course. To determine this we multiply the price for each class by the number of classes you attend up to the time you cancel. The price for each class is figured by dividing the $—— cost for the residence portion of this course by the —— classes in the course. We add to this total a $—— registration fee. The total is compared to what you paid to see if you are entitled to a refund or owe us addi-

tional money. If you are entitled to a refund, we will send it to you within twenty one (21) days from the day you cancel.

If you do not send in any lessons for 120 straight days at any point during the home study portion of this course or do not attend classes for 5 straight days on which classes are held during the residence portion of this combination course, we will cancel your contract. But you will be given an opportunity to apply for reinstatement by writing to us that you wish to continue.

I have changed my mind and want to cancel this contract.

Date ———————————
Student's Signature ———————————

APPENDIX K

CANCELLING THIS CONTRACT

This notice explains your rights and responsibilities concerning cancellation of this contract.

Automatic Cancellation

This contract is automatically cancelled and you do not owe us any money if the following two (2) forms are not mailed to you.

How Our Students Are Doing

Tells you how many students complete the course [for schools making job or earnings claims insert "and the placement rate of our graduates"].

How To Cancel Your Contract

Provides information on how to cancel this contract. Also, this form describes how we figure what is owed for students who have already begun the course.

Your Right To Cancel

If you decide not to take this course, you have fourteen (14) days to cancel this contract and get a full refund. The fourteen days start on the day we mail these forms. The *How To Cancel Your Contract* form shows you when the fourteen days are up. To cancel, you must sign the bottom of this contract or the *How To Cancel Your Contract* form we are sending you, put on the date and mail this contact or the form to us no later than midnight of the fourteenth day.

You can also cancel this contract by sending us a letter no later than midnight of the fourteenth day. Be sure to date and sign your letter. If possible, keep a copy. Your contract will be cancelled the day you mail this letter.

Equipment

A description of the equipment we will provide you with and the charges are summarized below:

Item	Delivery date	Cost
Ohmmeter.....	1/31/78 (or lesson or.....	$32.00
Circuit board.....	2/31/78 class number)....	$20.00

Settling Your Account

If you cancel this contract within the fourteen (14) day period, we will refund any money you have paid us within two (2) weeks from the day we receive your cancellation.

If you cancel this contact after the fourteen (14) day period, you may owe us some money. Keep in mind that if you return the equipment we delivered, you pay for a proportion of its cost. When you keep the equipment, you pay for its full cost.

If you return the equipment we delivered, we add the $—— cost of the home study portion of this course and the cost of the equipment delivered to you during this portion of the course. We divide this total by the —— lessons in the home study portion of the course to get a cost per lesson. We multiply this cost per lesson by the number of lessons you sent in.

We add to this the amount you owe us for the residence portion of this course and the cost of the equipment delivered to you during this portion of the course. We divide this total by the —— classes in the course. We multiply this cost per class by the number of classes held before you cancelled. We add a $—— registration fee to what you owe us for the home study and residence portions of this course. The total is compared to what you paid to see if you are entitled to a refund or owe us additional money.

If you fail to return this equipment to us within twenty one (21) days from the date this contract is cancelled, we divide the $—— cost for the home study portion of this course by the —— lessons in the course. This gives us a price per lesson of $——. We mulitply this price per lesson by the number of lessons you sent in. We add to this the amount you owe us for the residence portion of this course.

We divide the $—— cost for the residence portion of this course by the —— classes in the course. This gives us a price per class of $——. We multiply this price per class by the number of classes held before you cancel. We add the cost of the equipment delivered to you and a $—— registration fee to what you owe us for the home study and residence portion of the course. The total is compared to what you paid to see if you are entitled to a refund or owe us additional money. If you are entitled to a refund, we will send it to you within twenty one (21) days from the day you cancel.

If you do not send in any lessons for 120 straight days at any point during the home study portion of this course or do not attend classes for 5 straight days on which classes are held during the residence portion of this combination course, we will cancel your contract. But you will be given an opportunity to apply for reinstatement by writing to us that you wish to continue.

I have changed my mind and want to cancel this contract.

Date ———————————
Student's Signature ———————————

APPENDIX L

HOW TO CANCEL YOUR CONTRACT

You have fourteen (14) days from the day we mailed you this notice to cancel your contract and get a full refund. To cancel, sign this form, date it, and mail it to us before midnight on ———. If you cancel this contract within this fourteen (14) day period, we will refund any money you have paid us within two (2) weeks from the day we receive your cancellation.

If you cancel this contract after the fourteen (14) day period, you may owe use some money. To determine the exact amount, we multiply the price for each lesson by the number of lessons you sent in and a $—— registration fee. We compare this to what you paid to see if you are entitled to a refund or owe us additional money. The price for each lesson is figured by dividing the $—— course cost by the —— lessons in the course. If you are entitled to a refund, we will send it to you within twenty one (21) days from the day you cancel.

If you do not send in any lessons for 120 straight days at any point during the course, we will cancel your contract. But you will be given an opportunity to apply for reinstatement by writing to us that you wish to continue.

I have changed my mind and want to cancel this contract.

Date ———————————
Student's Signature ———————————

APPENDIX M

HOW TO CANCEL YOUR CONTRACT

You have fourteen (14) days from the day we mailed you this notice to cancel your contract and get a full refund. To cancel, sign this form, date it, and mail it to us before midnight on ———.

Equipment

A description of the equipment we will send you and the charges are summarized below:

Item	Delivery date	Cost
Ohmmeter.....	1/31/78 (or lesson.....	$32.00
Circuit board.....	2/31/78 number).....	$20.00

Settling Your Account

If you cancel this contract within the fourteen (14) day period, we will refund any money you have paid us within two (2) weeks from the day we receive your cancellation.

If you cancel this contract after the fourteen (14) day period, you may owe us some money. Keep in mind that if you return the equipment we delivered, you pay for a proportion of its cost. Your payment is based on the number of lessons you sent in. When you keep the equipment, you pay for its full cost.

If you return the equipment we delivered, we add the $—— course cost and the cost of the equipment delivered. We divide this total by the —— lessons in the course to get a cost per lesson.

We multiply this cost per lesson by the number of lessons you sent in and add a $—— registration fee. The total is compared to what you paid to see if you are entitled to a refund or owe us additional money.

If you fail to return this equipment within twenty one (21) days from the date this contract is cancelled, we divide the $—— course cost by the —— lessons in the course. This gives us a price per lesson of $——. We multiply this price per lesson by the number of lessons you sent in. Finally, we add the cost of the unreturned equipment and a $——

registration fee. The total is compared to what you paid to see if you are entitled to a refund or owe us additional money. If you are entitled to a refund, we will send it to you within twenty one (21) days from the day you cancel.

If you do not send in any lessons for 120 straight days at any pont during the course, we will cancel your contract. But you will be given an oppourtunity to apply for reinstatement by writing to use that you wish to continue.

I have changed my mind and want to cancel this contract.

Date ———————————

Student's Signature ———————————

APPENDIX N

HOW TO CANCEL YOUR CONTRACT

You have fourteen (14) days from the day we mailed you this notice to cancel your contract and get a full refund. To cancel, sign this form, date it, and mail it to us before midnight on ———. If you cancel this contract within this fourteen (14) day period, we will refund any money you have paid us within two (2) weeks from the day we receive your cancellation.

If you cancel this contract after the fourteen (14) day period, you may owe us some money. To determine the exact amount, we multiply the price for each class by the number of classes you attend and add a $—— registration fee. We compare this to what you paid to see if you are entitled to a refund or owe us additional money. The price for each class is figured by dividing the $—— course cost by the —— classes in the course. If you are entitled to a refund, we will send it to you within twenty one (21) days from the day you cancel.

If you do not attend classes for 60 straight days at any point during the course, we will cancel your contract. But you will be given an opportunity to apply for reinstatement by writing to us that you wish to continue.

I have changed my mind and want to cancel this contract.

Date ———————————

Student's Signature ———————————

APPENDIX O

HOW TO CANCEL YOUR CONTRACT

You have fourteen (14) days from the day we mailed you this notice to cancel your contract and get a full refund. To cancel, sign this form, date it, and mail it to us before midnight on ———.

Equipment

A description of the equipment we will provide you with and the charges are summarized below:

Item	Delivery date	Cost
Ohmmeter	1/31/78 (or class	$32.00
Circuit board	2/31/78 number)	$20.00

Settling Your Account

If you cancel this contract within the fourteen (14) day period, we will refund any money you have paid us within two (2) weeks from the day we receive your cancellation. Any equipment we provided you with for this course must be returned to us within twenty (20) days from the day you cancel this contract or you will owe us the amount shown above.

If you cancel this contract after the fourteen (14) day period, you may owe us some money. Keep in mind that if you return the equipment we delivered, you pay for a proportion of its cost. Your payment is based on the number of classes you attend. When you keep the equipment, you pay for its full cost.

If you return the equipment we delivered, we add the $—— course cost and the cost of the equipment delivered. We divide this total by the —— classes in the course to get a cost per class. We multiply this cost per class by the number of classes you attended and add a $—— registration fee. The total is compared to what you paid to see if you are entitled to a refund or owe us additional money.

If you fail to return this equipment within twenty one (21) days from the date this contract is cancelled, we divide the $—— course cost by the —— classes in the course. This gives us a price per class of $——. We multiply this price per class by the number of classes you attended. Finally, we add the cost of the unreturned equipment and a $—— registration fee. The total is compared to what you paid to see if you are entitled to a refund or owe us additional money. If you are entitled to a refund, we will send it to you within twenty one (21) days from the day you cancel.

If you do not attend classes for 60 straight days at any point during the course, we will cancel your contract. But you will be given an opportunity to apply for reinstatement by writing to us that you wish to continue.

I have changed my mind and want to cancel this contract.

Date ———————————

Student's Signature ———————————

APPENDIX P

HOW TO CANCEL YOUR CONTRACT

You have fourteen (14) days from the day we mailed you this notice to cancel your contract and get a full refund. To cancel, sign this form, date it, and mail it to us before midnight on ———. If you cancel this contract within this fourteen (14) day period, we will refund any money you have paid us within two (2) weeks from the day we receive your cancellation.

If you cancel this contract after the fourteen (14) day period, you may owe us some money. To determine the exact amount, we multiply the price for each class by the number of classes held before you cancel and add a $—— registration fee. We compare this to what you paid to see whether you are entitled to a refund or owe us additional money. The price for each class is figured by dividing the $—— course cost by the —— classes in the course. If you are entitled to a refund we will send it to you within twenty one (21) straight days from the day you cancel.

If you do not attend classes for five (5) straight days on which classes meet, we will cancel your contract. But you will be given an opportunity to apply for reinstatement by writing to us that you wish to continue.

I have changed my mind and want to cancel this contract.

Date ———————————

Student's Signature ———————————

APPENDIX Q

HOW TO CANCEL YOUR CONTRACT

You have fourteen (14) days from the day we mailed you this notice to cancel your contract and get a full refund. To cancel, sign this form, date it, and mail it to us before midnight on ———.

Equipment

A description of the equipment we will provide you with and the charges are summarized below:

Item	Delivery date	Cost
Ohmmeter	1/31/78 (or class	$32.00
Circuit board	2/31/78 number)	$20.00

Settling Your Account

If you cancel this contract within the fourteen (14) day period, we will refund any money you have paid us within two (2) weeks from the day we receive your cancellation. Any equipment we provided you with for this course must be made available to us or you will owe us the amount shown above. We will pick up this equipment within twenty (20) days from the date the contract is cancelled. If we fail to pick up this equipment by then, you can keep it without paying for it.

If you cancel this contract after the fourteen (14) day period, you may owe us some money. Keep in mind that if you return the equipment we delivered, you pay for a proportion of its cost. Your payment is based on the number of classes held before you cancel. When you keep the equipment, you pay for its full cost.

If you return the equipment we delivered, we add the $—— course cost and the cost of the equipment delivered. We divide this total by the —— classes in the course to get a cost per class. We multiply this cost per class by the number of classes held before you cancel and add a $—— registration fee. The total is compared to what you paid to see if you are entitled to a refund or owe us additional money.

If you fail to return this equipment within twenty one (21) days from the date this contract is cancelled, we divide the $—— course cost by the —— classes in the course. This gives us a price per class of $——. We multiply this price per class by the number of classes held before you cancel. Finally, we add the cost of the unreturned equipment and a $—— registration fee. The total is compared to what you paid to see if you are entitled to a refund or owe us additional money. If you are entitled to a refund, we will send it to you within twenty one (21) days from the day you cancel.

If you do not attend classes for five (5) straight days on which classes meet, we will

cancel your contract. But you will be given an opportunity to apply for reinstatement by writing to us that you wish to continue.

I have changed my mind and want to cancel this contract.

Date ———————————————
Student's Signature ———————————————

APPENDIX R

HOW TO CANCEL YOUR CONTRACT

You have fourteen (14) days from the day we mailed you this notice to cancel your contract and get a full refund. To cancel, sign this form, date it, and mail it to us before midnight on ———. If you cancel this contract within this fourteen (14) day period, we will refund any money you have paid us within two (2) weeks from the day we receive your cancellation.

If you cancel this contract after the fourteen (14) day period, you may owe us some money. To determine the exact amount, we multiply the price for each lesson in the home study portion of this course by the number of lessons you sent in. The price for each lesson is figured by dividing the $—— cost for home study portion of this course by the —— lessons in that part of the course. We add to this the amount you owe us for the residence portion of this course. To determined this we multiply the price for each class by the number of classes you attend up to the time you cancel. The price for each class is figured by dividing the $__ cost for the residence portion of this course by the —— classes in the course. We add to this total a $—— registraton fee. The total is compared to what you paid to see if you are entitled to a refund, or owe us additional money. If you are entitled to a refund, we will send it to you within twenty one (21) days from the day you cancel.

If you do not send in any lessons for 120 straight days at any point during the home study portion of this course or do not attend classes for 5 straight days on which classes are held during the residence portion of this combination course, we will cancel your contract. But you will be given an opportunity to apply for reinstatement by writing to us that you wish to continue.

I have changed my mind and want to cancel this contract.

Date ———————————————
Student's Signature ———————————————

APPENDIX S

HOW TO CANCEL YOUR CONTRACT

You have fourteen (14) days from the day we mailed you this notice to cancel your contract and get a full refund. To cancel, sign this form, date it, and mail it to us before midnight on ———.

Equipment

A description of the equipment we will send you and the charges are summarized below:

Item	Delivery date	Cost
Ohmmeter.....	1/31/78 (or lesson or.....	$32.00
Circuit board.....	2/31/78 class number	$20.00

Settling Your Account

If you cancel this contract within the fourteen (14) day period, we will refund any money you have paid us within two (2) weeks from the day we receive your cancellation.

If you cancel this contract after the fourteen (14) day period, you may owe us some money. Keep in mind that if you return the equipment we delivered, you pay for a proportion of its cost. When you keep the equipment, you pay for its full cost.

If you return the equipment we delivered, we add the $—— cost of the home study portion of this course and the cost of the equipment delivered to you during this portion of the course. We divide this total by the —— lessons in the home study portion of the course to get a cost per lesson. We multiply this cost per lesson by the number of lessons you sent in.

We add to this the amount you owe us for the residence portion of this course and the cost of the equipment delivered to you during this portion of the course. We divide this total by the —— classes in the course. We multiply this cost per class by the number of classes held before you cancelled. We add a $—— registration fee to what you owe us for the home study and residence portions of this course. The total is compared to what you paid to see if you are entitled to a refund or owe us additional money.

If you fail to return this equipment to us within twenty-one (21) days from the date this contract is cancelled, we divide $—— cost for the home study portion of this course by the —— lessons in the course. This gives us a price per lesson of $——. We multiply this price per lesson by the number of lessons you sent in. We add to this the amount you owe us for the residence portion of this course.

We divide the $—— cost for the residence portion of this course by the —— classes in the course. This gives us a price per class of $——. We multiply this price per class by the number of classes held before you cancel. We add the cost of the equipment delivered to you and a $—— registration fee to what you owe us for the home study and residence portion of the course. The total is compared to what you paid to see if you are entitled to a refund or owe us additional money. If you are entitled to a refund, we will send it to you within twenty-one (21) days from the day you cancel.

If you do not send in any lessons for 120 straight days at any point during the home study portion of this course or do not attend classes for 5 straight days on which classes are held during the residence portion of this combination course, we will cancel your contract. But uou will be given an opportunity to apply for reinstatement by writing to us that you wish to continue.

I have changed my mind and want to cancel this contract.

Date ———————————————
Student's Signature ———————————————

By direction of the Commission.

CAROL M. THOMAS,
Secretary.

[FR Doc. 78-36021 Filed 12-27-78; 8:45 am]

federal register

THURSDAY, DECEMBER 28, 1978

PART VIII

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

■

LOW RENT HOUSING HOMEOWNERSHIP OPPORTUNITIES

Turnkey III Program

[4210-01-M]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[24 CFR Part 804]

[Docket No. R-78-603]

LOW RENT HOUSING HOMEOWNERSHIP OPPORTUNITIES

Turnkey III Program

AGENCY: Department of Housing and Urban Development.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Turnkey III Home Ownership Opportunities Program to give Public Housing Authority (PHAs) greater flexibility in the marketing of Turnkey III units and to set forth standards and procedures applicable to homebuyers. Included in the proposed rule are provisions for operating subsidies and PHA purchase money financing. The changes are designed to improve operational flexibility of the program and to improve management.

EFFECTIVE DATE: January 29, 1979.

ADDRESS: Comments and suggestions, which should include a reference to the docket number and date of publication, should be sent to the Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410.

FOR FUTHER INFORMATION CONTACT:

Wayne Hunter, Office of Assisted Housing Management, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410, 202-755-6460. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

INABILITY TO MARKET TURNKEY III UNITS

1. Section 804.101(b)(1) would be amended to provide that where a PHA is temporarily unable to market vacant Turnkey III units to homebuyer families which meet the regular Turnkey III standards, the PHA may rent the units to families which meet the standards for admission to a public housing rental project.

AMENDMENTS WITHOUT PREJUDICE TO CONTRACT RIGHTS

2. Section 804.101(b)(6) would provide that a homebuyer who executed the form of Homebuyers Ownership Opportunity Agreement as required in accordance with the Turnkey III regulations in effect at the time of the execution shall be entitled to all rights and privileges provided under subsequent amendments of the regulations, but that such amendments shall not be applied in derogation of any rights or privileges under the homebuyer's executed agreement. The Turnkey III regulations were first promulgated on October 9, 1973, and were once previously amended, on March 22, 1974. Section 804.101(b)(6) would give a homebuyer who executed the them required form of agreement on or after October 9, 1973, the benefits of the present amendments, as well as the amendments of March 22, 1974, but without prejudicing the homebuyer's contract rights.

ADMISSION AND CONTINUED OCCUPANCY

3. Section 804.104(a) would specify that the PHA must adopt regulations establishing standards and procedures for the admission of Turnkey III homebuyers, including any preferences, priorities or other factors affecting admission, and that these admission regulations must be in accordance with all applicable HUD requirements.

4. Section 804.104(c)(2) would clarify the requirements for adoption, subject to HUD approval, of PHA regulations establishing schedules of maximum income limits.

5. Every family selected for admission to a Turnkey III development must meet defined standards of "potential for homeownership." The regulations would be amended (Section 804.104(f)(2)) to specify, in accordance with Section 6(c)(4)(D) of the United States Housing Act of 1937, that the standards are intended to assure that selection for the homeownership development is limited to low-income families capable of assuming the responsibilities of homeownership.

6. The regulations now provide that a PHA must select Turnkey III homebuyers whose monthly payments allow a margin (ten percent) over the minimum (referred to as "break-even") needed for maintenance and expenses. The amendment would remove the requirement for a margin over break-even. The regulation would state (Section 804.104(g)(2)) the monthly payments for the selected homebuyers shall result in average monthly payments at least equal to the break-even amount for the development.

7. The regulations would be amended to provide (Section 804.104(g)(3)) that the PHA must assure in the selection of homebuyers the achievement and maintenance of occupancy by a body of homebuyers with a broad range of incomes generally representative of the range of incomes of low-income families in the area who would be qualified for admission to the Turnkey III development.

The PHA would also be required to avoid concentrations of the most economically deprived families in any one or all of the PHA's low-income develpments; and in any project placed under ACC after September 26, 1975, to assure occupancy of at least 20 percent of the homes by homebuyers whose incomes do not exceed 50 percent of the median income of families in the area who would be qualified for admission (Section 804.104(g) (4) and (5)).

8. The regulations (Section 804.104(h)) governing continued occupancy of the homes by homebuyers who not longer require subsidy, and the definition of monthly housing cost for this purpose, would be deleted, to reflect the elimination of the statutory requirement for establishing limits for continued occupany. However, after a homebuyer becomes eligible for PHA financing of the home purchase, the homebuyer is no longer entitled to automatic monthy reductions of the purchase price. The purchase price is frozen at the amount on the purchase price schedule when the homebuyer is notified that the financing is available (Section 804.116(a)(3)).

PROTECTION OF CHILD'S INTEREST IN HOME

9. The March 22, 1974 amendments of the Turnkey III regulations include a provision that where a homebuyer dies and only minor children are left as occupants of the home, the PHA may, in order to protect the children's occupancy, and opportunity to gain ownership of the home, approve as occupant an adult who has been appointed legal guardian of the children with a duty to preform the obligations of the homeownership agreement on their behalf. In response to questions which have arisen concerning these procedures, it is proposed to amend Section 804.107(1)(3) to permit a non-occupant to act as guardian of the child's interest in the home, where the child continues to live in the home with an adult to care for the child. The amendments would also provide that the income of the person who actually occupies the home to care for the child is included in the family income for purpose of determining the amount of the required monthly payment, but that the regulatory provision requiring the maintenance of homeownership potential is not applicable during the period of approved occupany on behalf of the child. Other technical provisions would clarify the respective rights of the child, the guardian, and the person living in the home to care for the child.

HOMEBUYER PAYMENTS

10. Section 804.102 would state that the term "family income" in the Turnkey III regulations has the same meaning as in the public housing rental regulations (Section 860.403(f)). Section 804.107(j) would be amended to state that the PHA's schedule for determing monthly payments must comply with the regulations establishing minimum and maximum rents for public housing (Part 860, Subpart D, Minimum and Maximum Rent-Income Ratios, and Minimum Rent Requirements). This amendment would confirm and clarify the applicability of these regulations to Turnkey III (see Section 860.402), but does not establish a new requirement.

11. Section 804.107(j) would also be amended to delete the reference to inclusion of the monthly allowance for utilities in the "maximum required monthly payment." The amount of the required monthly payment (contract rent) reflects a prior deduction for tenant-supplied utilities.

HOMEBUYER ACCOUNTS

12. Section 804.108(c) would be amended to state, as originally intended, that where a homebuyer's monthly payment is less than the amount needed for the accounts for routine and nonroutine maintenance (Earned Home Payments Account and Nonroutine Maintenance Reserve), the deficiency is supplied out of the PHA's operating funds.

13. A new § 804.110(k) would be added to make it clear that the amount available for use in a homebuyer's Earned Home Payments Account is the net amount remaining after deducting amounts the homebuyer owes the PHA, including delinquent monthly payments.

14. Many comments to HUD have indicated the desirability of providing additional equity incentive for homebuyers paying more than the amount necessary to cover the per unit provision for maintenance and operation (break-even). Section 804.112(e) would therefore be amended to provide that where the PHA accumulates an operating reserve in excess of the HUD-determined amount necessary for the financial needs of the project (maximum operating reserve level), the excess shall be prorated to the equity accounts of such homebuyers in proportion to the amounts of their excess payments during the year. Homebuyers whose payments for the year were less than the break-even amount for the year, or are delinquent in making required payments, would not be eligible for the additional credits.

OPERATING SUBSIDY

15. A new § 804.109(e) would provide that HUD will pay operating subsidy for the cost of Independent Public Accountant Audits. The regulations would also permit the payment of operating subsidy to cover HUD-approved expenses for:

(a) Vacancy losses if the PHA is making every reasonable effort to fill the vacancies.

(b) Where a homebuyer's agreement has been terminated, collection losses and costs to put the home in condition for the next occupant.

(c) HUD-approved homebuyer counseling.

(d) Training of staff and commissioners.

(e) Where HUD finds that there are unusual circumstances justifying payment of operating subsidy.

PURCHASE OF HOME

16. The regulations specify that a homebuyer may not purchase the home unless the homebuyer has achieved a specified minimum balance in the Earned Home Payments Account within the first two years. Section 804.110(c)(2) would be amended to provide that the PHA may allow additional time to reach the required balance where there are extenuating causes of the failure or the reasons for the failure may be eliminated by counseling or other assistance.

17. A new § 804.110(c)(3) would make it clear that the PHA must consult with the homebuyer's association before determining that a homebuyer may exercise the option to purchase, but that the final decision is the PHA's responsibility.

18. Section 804.115(b) would be amended to provide that the purchase price for a homebuyer other than the homebuyer who first occupies the home is the appraised value or replacement cost of the home, whichever is lower. Section 804.115(c) would be amended to provide a uniform amortization period for all homebuyers in the development.

19. Section 804.116(c) would be added to state the duty of the PHA to remit purchase payments to HUD. Where PHA mortgage financing is used, these amounts include the mortgagor's debt service payments.

PHA MORTGAGE FINANCING

20. In response to difficulties encountered by Turnkey III homebuyers in obtaining independent financing for purchase of the homes, Section 804.116(a) of the proposed regulations would allow PHA purchase-money financing for a homebuyer able to cover the expenses of homeownership, including debt service, insurance and taxes, with 25 percent of family income (see also definition of "PHA homeownership financing" (§ 804.102)). The PHA financing could only be offered when other suitable financing is not available.

Where the PHA financing is used, the PHA would take back at settlement a promissory note and mortgage for the unpaid balance of the purchase price. The financing instruments would provide for a reduction, if the mortgagor's family income is later reduced, of the portion of the monthly mortgage payment attributable to debt service (§ 804.116(a)(4)(iii)(C). Even if the debt service payment is reduced, the mortgage debt would continue to be reduced each month in accordance with a predetermined amortization schedule as long as the mortgagor is meeting all obligations (§§ 804.116 (a)(4)(ii); 804.116 (a)(4)(iii)(D)). The mortgagor's payments for insurance, taxes and the PHA mortgage servicing charge would not be subject to reduction on account of any changes in the family income. Since the payments by a mortgagor-homeowner are not "rental," the regulations (§ 804.116(a)(4)(iii)(C)) specify that these minimum payments are not subject to the minimum or maximum rental (Brooke) provisions in section 3(1) of the Act, or the HUD Brooke regulations.

RECAPTURE OF PROFIT ON RESALE

21. Section 804.114 now provides for recapture of profit from a homebuyer who sells within 5 years after taking title to the home. These provisions would be modified to require recapture of profit only if the homeowner resells within the five-year period commencing with the first day of the month following the effective date of the Homeownership Agreement. Recapture would not be required if the homeowner sells after this five-year period. Since a homebuyer may not take title to the home for the first two years of occupancy, the recapture provisions would now apply only to a resale during the three years after the homebuyer is first able to exercise the option to purchase the home. The promissory note would no longer provide for reductions of the recapture obligation over the five-year period.

MISCELLANEOUS AMENDMENTS

22. Section 804.107(o)(2) provides that where a Turnkey III family has lost homeownership potential, the family may be required to vacate the home if the PHA offers the family a suitable unit in a public housing rental project. These provisions would be amended to provide that the family may also be required to move if the family is able to obtain assistance through the PHA's Section 8 Existing Housing Program.

23. The Planned Unit Development (PUD) or condominum documents establishing a homeowner's duty to make payments to the PHA or homeowner's association for common property maintenance and other purposes should be recorded before any of the homes are conveyed. Section 804.117 would, however, be amended to provide that where the PHA has in fact failed to record, a home may not be conveyed until the homebuyer has contracted to make the payments.

24. Sections 804.109(a)(7), 804.109(c)(2), and 804.110(d) would be amended to incorporate various technical changes concerning maintenance of common property.

25. Section 804.112(a) would be amended to allow the PHA to charge against the project operating reserve costs of non-routine maintenance which are covered by warranty but not paid for under the warranty through no fault or neglect of the homebuyer.

26. Appendices setting forth the forms of special conditions to be included in a Turnkey III ACC, homebuyers agreement, and certification of homebuyer status, would be deleted from the regulation, but use of HUD-prescribed forms would still be required.

A Finding of Inapplicability with respect to the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of this finding is available for public inspection in the Office of the Rules Docket Clerk during regular business hours, at the address specified above.

Accordingly, it is proposed that 24 CFR Part 804, Subpart B would be amended to read as follows:

Subpart B—Turnkey III Program Description

Sec.

804.101 Introduction.
804.102 Definitions.
804.103 Development.
804.104 Eligibility and Selection of Homebuyers.
804.105 Counseling of Homebuyers.
804.106 Homebuyers Association (HBA).
804.107 Responsibilities of Homebuyer.
804.108 Break-Even Amount.
804.109 Monthly Operating Expense, Operating Subsidy.
804.110 Earned Home Payments Account (EHPA).
804.111 Nonroutine Maintenance Reserve (NEMR).
804.112 Operating Reserve.
804.113 Achievement of Ownership by Initial Homebuyer.
804.114 Resale at Profit During First Five Years.
804.115 Achievement of Ownership by Subsequent Homebuyer.
804.116 PHA Homeownership Financing; conveyance of Home.
804.117 Responsibilities of Homeowner.
804.118 Homeowners Association—Planned Unit Development (PUB).
804.119 Homeowners Association—Condominium.
804.120 Realtionship of Homeowners Association to HBA.

Subpart B—Turnkey III Program Description

§ 804.101 Introduction.

(a) *Purpose.* This subpart sets forth the essential elements of the HUD Homeownership Opportunities program for Low-Income Families (Turnkey III).

(b) *Applicability.* This subpart shall be applicable to all Turnkey III developments, including those under development or in operation on October 9, 1973, as follows:

(1) With respect to any development to be operated as Turnkey III, the Annual Contributions contract (ACC) shall contain the special provisions for Turnkey III project as prescribed by HUD. A Turnkey III development may include only units which are to be operated as such under Homebuyers Ownership Opportunity Agreements. If for any reason it is determined that certain units should be operated as conventional public housing rental units, such units must be made to comprise or be made part of a conventional public housing rental project. If, however, the PHA is temporarily unable to market vacant units in the Turnkey III development to families which meet the standards for admission of Turnkey III homebuyers, the PHA shall rent the units to low-income families which meet the standards for admission to a public housing rental project, and which agree to move to a suitable unit in a PHA rental project if the PHA so requires.

(2) With respect to Turnkey III developments where no Agreements with homebuyers were signed prior to October 9, 1973, the ACC shall be amended (i) to include special provisions as prescribed by HUD, (ii), to extend the ACC term to 30 years, and (iii) to reduce the Maximum Contribution Percentage to a rate that will amortize the debt in 30 years at the minimum Loan Interest Rate specified in the ACC for the specific Turnkey III project involved. Further development and operation shall be in accordance with this subpart including use of the form of Homebuyers Ownership Opportunity Agreement as prescribed by HUD.

(3) With respect to developments where any Agreements with homebuyers were signed prior to October 9, 1973, the following steps shall be taken:

(i) The ACC shall be amended to include special provisions as prescribed by HUD. Further development and operation shall be in accordance with this subpart.

(ii) The PHA shall offer all qualified homebuyers in the development a new Homebuyers Ownership Opportunity Agreement in the form prescribed By HUD, provided that the initial purchase prices shall be based on the latest approved Development Cost Budget, or Actual Development Cost Certificate if issued, in lieu of the Development Cost Budget in effect upon award of the Construction Contract or execution of the Contract of Sale, and that if the ACC for the Project has a term of 25 years the Purchase Price Schedule shall be based on a term of 25 years, instead of 30. Each Purchase Price Schedule shall commence with the first day of the month following the effective date of the initial Agreement. No other modification in the new Agreement may be made. In the event the homebuyer refuses to accept the new Agreement, no modifications may be made in the old Agreement and the matter shall be referred to HUD.

(4) With respect to Projects which were under ACC on October 9, 1973, the Total Development Cost Budget shall be revised, if financially feasible, to include the cost of the appraisals which are necessary for computation of the initial purchase prices pursuant to § 804.113. In the event his is not financially feasible, the matter shall be referred to HUD, which may, if necessary, authorize a different method for computation of such initial purchase prices on an equitable basis.

(5) With respect to all developments which were completed by October 9, 1973, the appraisals which are necessary for computation of the initial purchase prices pursuant to § 804.113 shall be made as of the date of completion of the development.

(6) Homebuyers who executed the form of Homebuyers Ownership Opportunity Agreement in the form as prescribed by HUD in Accordance with this subpart on the date of execution shall be entitled to all rights and privileges provided under subsequent amendments of the subpart, but such amendments shall not be applied in derogation of any rights or privileges of the homebuyer under the executed Agreement.

§ 804.102 Definitions.

The term "common property" means the nondwelling structures and equipment, common areas, community facilities, and in some cases certain component parts of dwelling structures, which are contained in the development: Provided however, that in the case of a development that is organized as a condominium or a planned unit development (PUD), the term "common property" shall have the meaning established by the condominium or PUD documents and the State law pursuant to which the condominium or PUD is organized, under the terms "common areas," "common

facilities," "common elements," "common estate," or other similar terms.

The term "development" means the entire undertaking including all real and personal property, funds and reserves, rights, interests and obligations, and activities related thereto.

The term "EHPA" means the Earned Home Payments account established and maintained pursuant to § 804.110.

The term "family income" shall have the meaning set forth in the definition of "Family Income" in 24 CFR § 860.403(f).

The term "homebuyer" means the member or members of a low-income family who have executed a Homebuyers Ownership Opportunity Agreement with the PHA, and who have not yet acquired ownership of the home.

The term "homebuyers association" (HBA) means an organization as defined in § 804.106.

The term "homeowner" means a homebuyer who has acquired title to the home.

The term "homeowner association" means an association comprised of homeowners, including condominum associations, having responsibilities with respect to common property.

The term "HUD" means the Department of Housing and Urban Development which provides PHAs with financial assistance through loans and annual contributions and technical assistance in development and operation.

The term "NRMR" means the Nonroutine Maintenance Reserve established and maintained pursuant to § 804.111.

The term "PHA" means the local public housing agency which acquires or develops a low-income housing development with financial assistance from HUD, owns the homes until title is transferred to the homebuyers, and is responsible for the management of the homeownership opportunity program.

The term "PHA homeownership financing" means PHA financing for purchase of a home by an eligible homebuyer who gives the PHA a promissory note and mortgage for the balance of the purchase price in accordance with § 804.116(a).

The term "project" is used to refer to the development in relation to matters specifically related to the Annual Contributions Contract.

§ 804.103 Development.

(a) *Financial framework.* The PHA shall finance development or acquisition by sale of its notes (bond financing shall not be used) in the amount of the Minimum Development Cost. Payment of the debt service on the notes is assured by the HUD commitment to provide debt service annual contributions.

(b) *Contractual framework.* There are three basic contracts:

(1) An Annual Contributions Contract containing the Special Conditions as prescribed by HUD for a Turnkey III Homeownership Opportunity Project;

(2) A Homebuyers Opportunity Agreement in the form prescribed by HUD, which sets forth the respective rights and obligations of the low-income occupants and the PHA, including conditions for achieving homeownership; and

(3) A Recognition Agreement (see Appendix II of Subpart D of this part) between the PHA and the HBA under which the PHA agrees to recognize the HBA as the established representative of the homebuyers.

(c) *Community Participation Committee (CPC).* In the necessary development of citizens' participation in and understanding of the Turnkey III program, the PHA should consider formation and use of a CPC to assist the community and the PHA in the development and support of the Turnkey III program. The CPC shall be a voluntary group comprised of representatives of the low-income population primarily and may also include representatives of community service organizations.

§ 804.104 Eligibility and Selection of Homebuyers.

(a) *Adoption of Admission Regulations.* The PHA shall adopt regulations establishing standards and procedures for the admission of homebuyers to Turnkey III developments, including any preferences, priorities or other factors affecting admission. The PHA admission regulations shall be in accordance with all applicable HUD regulations or other HUD requirements.

(b) *Announcement of availability of housing; fair housing marketing.*

(1) The availability of housing under Turnkey III shall be announced to the community at large. Families on the waiting list for PHA conventional public housing rental units who wish to be considered for Turnkey III must apply specifically for that program (see paragraph (e) of this section).

(2) The PHA shall submit to HUD an Affirmative Fair Housing Marketing Plan and shall otherwise comply with the provisions of the Affirmative Fair Housing Marketing Regulations, 24 CFR Part 200, subpart M, as if the PHA were an applicant for participation in a HUD housing program. This Plan shall be submitted with the development program and no development program may be approved without prior approval of the Plan pursuant to HUD procedures under said Affirmative Fair Housing Marketing Regulations. If the development program has been approved, but the Annual Contributions Contract has not been executed, prior to October 9, 1973, an Affirmative Fair Housing Marketing Plan must be approved prior to execution of said contract.

(c) *Eligibility and standards for admission.* (1) Homebuyers shall be low-income families as determined in accordance with the income definitions and limits established by the PHA in accordance with the Act, and approved by HUD (see paragraph (c)(2) of this section). The PHA's established priorities and preferences and the requirements for administration of low-income housing under Title VI of the Civil Rights Act of 1964 (Public Law 88-352, 78 Stat. 241, 42 U.S.C. 2000d) shall be applicable except that the procedures used for homebuyer selection under Turnkey III shall be those set forth in this section. In carrying out these procedures the aim shall be to provide for equal housing opportunity in such a way as to prevent segregation or other discrimination of the basis of race, creed, color or national origin in accordance with the Civil Rights Acts of 1964 (Public Law 88-352, 78 Stat. 241, 42 U.S.C. 2000d) and 1968 (Public Law 90-284, 82 Stat. 73, 42 U.S.C. 3601).

(2) Subject to HUD approval the PHA shall adopt regulations establishing schedules of maximum income limits. The PHA may establish maximum income limits for Turnkey III which are different from those for its conventional rental program, provided that those limits are in accord with all applicable statutory and administrative requirements and are approved by HUD.

(d) *Determination of eligibility and preparation of list.* The PHA, without participation of a recommending committee (see paragraph (f)(1) of this section), shall determine the eligibility of each applicant family in respect to the income limits for the development and shall then assign each eligible applicant its appropriate place on a waiting list for the developlment, in sequence based upon the date of the application, suitable type or size of unit and factors affecting preference or priority established by the PHA's regulations.

(e) *List of applicants:*

(1) *Establishment of separate list.* A separate list of applicants for Turnkey III shall be maintained, consisting of families who specifically apply and are eligible for admission to such housing.

(2) *Dating of applications.* All applications for Turnkey III shall be dated as received.

(3) *Effect of applicant status.* The filing of an application for Turnkey III by a family which is an applicant

for PHA conventional rental public housing or is an occupant of such housing shall in no way affect its status with regard to such rental housing. Such an applicant shall not lose its place on the housing waiting list until the application is accepted for Turnkey III and shall not receive any different treatment or consideration with respect to conventional rental public housing because of having applied for Turnkey III.

(f) *Determination of potential for homeownership.*

(1) *Recommending committee.* The PHA should consider use of a recommending committee to assist in the selection of homebuyers from the families determined to have potential for homeownership. If a recommending committee is use, it should be composed of representatives of the CPC (if any), the PHA and the HBA. The PHA shall submit to the committee prompt written justification of any rejection of a committee recommendation stating grounds, the reasonableness of which shall be in accord with applicable PHA and HUD regulations. Each member of such a committee, at the time of appointment, shall be required to furnish the PHA with a signed statement that the member will (i) follow selection procedures and policies that do not automatically deny admission to a particular class, that insure selection on a non-discriminatory and non-segregated basis, and that facilitate achievement of the anticipated results for occupancy stated in the approved Affirmative Fair Housing Marketing Plan, and (ii) maintain strict confidentiality by not divulging any information concerning applicants or the deliberations of the committee to any person except to the PHA as necessary for purposes of the official business of the committee.

(2) *Potential for homeownership.* In order to be considered for selection, a family must be determined to meet at least all of the following standards of potential for homeownership which are intended to assure (in accordance with Section 6(c)(4)(D) of the United States Housing Act of 1937) that selection for the Turnkey III development is limited to low-income families capable of assuming the responsibilities of homeownership:

(i) Income sufficient to result in a required monthly payment which is not less than the sum of the amounts necessary to pay the EHPA, the NRMR, and the estimate average monthly cost of utilities attributable to the home;

(ii) At least one member gainfully employed, or having an established source of continuing income.

(g) *Selection of homebuyers.* Homebuyers shall be selected from those families determined to have potential for homeownership. Such selection shall be made in sequence from the waiting list established in accordance with this section provided that the following shall be assured:

(1) Selection procedures that do not automatically deny admission to a particular class; that insure selection on a nondiscriminatory and nonsegregated basis; and that facilitate achievement of the anticipated results for occupancy stated in the approved Affirmative Fair Marketing Plan.

(2) Achievement of an average monthly payment for the development, which is at least equal to the break-even amount for the development (see § 804.108). This standard shall be complied with both in the initial selection of homebuyers and in the subsequent filling of vacancies at all times during the life of the development. If there is an applicant who has potential for homeownership but whose required monthly payment under the PHA's Rent Schedule would be less than the break-even amount for the suitable size and type of unit, such applicant may be selected as a homebuyer, provided that the incomes of all selected homebuyers shall result in average required monthly payments at least equal to the break-even amount for the develpment. Such an average monthly payment for the development may be achieved by selecting other low-income families who can afford to make required monthly payments above the break-even amounts for their suitable sizes and types of units.

(3) Achievement and maintenance of occupancy of the development by a body of homebuyers with a broad range of incomes generally representative of the range of incomes of low-income families in the area who would be qualified for admission to the Turnkey III development.

(4) Avoidance of concentrations of the most economically deprived families in any one or all of the PHA's low-income developments.

(5) In any Project placed under ACC after September 26, 1975, achievement and maintenance of occupancy of at least 20 percent of the homes by homebuyers whose incomes do not exceed 50 percent of the median income of families in the area who would be qualified for admission to the development, with adjustments for smaller and larger families, as determined by HUD.

(h) *Notification of applicants.* (1) Once a sufficient number of applicants have been selected to assure that the provisions of paragraph (g)(2) of this section are met, the selected applicants shall be notified of the approximate date of occupancy insofar as such date can reasonably be determined.

(2) Applicants who are not selected for a specific Turnkey III development shall be so notified in accordance with HUD-approved procedures. The notice shall state the reason for the applicant's rejection (including a recommendation by the recommending committee unless the applicant has previously been so notified by the committee) and the notice shall state that the applicant will be given an informal hearing on such determination, regardless of the reason for the rejection, if the applicant makes a request for such a hearing within a reasonable time (to be specified in the notice) from the date of the notice.

§ 804.105 Counseling of homebuyers.

The PHA shall provide counseling and training as provided in subpart C of this part, with funding as provided in § 804.206 of this part. Applicants for admission shall be advised of the nature of the counseling and training programs available to them and the application for admission shall include a statement that the family agrees to participate and cooperate fully in all official pre-occupancy and post-occupancy training and counseling activities. Failure to participate as agreed may result in the family not being selected or retained as a homebuyer.

§ 804.106 Homebuyers Association (HBA).

An HBA is an incorporated organization composed of all the families who are entitled to occupancy pursuant to a Homebuyers Ownership Opportunity Agreement or who are homeowners. It is formed and organized for the purposes set forth in § 804.304 of this part. The HBA shall be funded as provided in § 804.305 of this part. In the absence of a duly organized HBA, the PHA shall be free to act without the HBA action required by this subpart.

§ 804.107 Responsibilities of homebuyer.

(a) *Repair, maintenance and use of home.* The homebuyer shall be responsible for the routine maintenance of the home to the satisfaction of the HBA and the PHA. This routine maintenance includes the work (labor and materials) of keeping the dwelling structure, grounds and equipment in good repair, condition and appearance so that they may be utilized continually at their designed capacities and at the satisfactory level of efficiency for their intended purposes, and in conformity with the requirements of local housing codes and applicable HUD regulations and guidelines. It includes repairs (labor and materials) to the dwelling structure, plumbing fixtures, dwelling equipment (such as range and refrigerator), shades and screens, water heater, heating, interior painting and the maintenance of grounds (lot) on which the dwelling is located.

It does not include maintenance and replacements provided for by the NRMR described in § 804.111.

(b) *Repair of damage.* In addition to the obligation for routine maintenance, the homebuyer shall be responsible for repair of any damage caused by the homebuyer family, or vistors.

(c) *Care of home.* A homebuyer shall keep the home in a sanitary condition; cooperate with the PHA and the HBA in keeping and maintaining the common areas and property, including fixtures and equipment, in good condition and appearance; and follow all rules of the PHA and of the HBA concerning the use and care of the dwellings and the common areas and property.

(d) *Inspections.* A homebuyer shall agree to permit officials, employees, or agents of the PHA and of the HBA to inspect the home at reasonable hours and intervals in accordance with rules established by the PHA and the HBA.

(c) *Use of home.* A homebuyer shall not (1) sublet the home without the prior written approval of the PHA and HUD, (2) use or occupy the home for any purpose deemed hazardous by insurance companies on account of fire or other risks, or (3) provide accommodations (unless approved by the HBA and the PHA) to boarders or lodgers. The homebuyer shall agree to use the home only as a place to live for the family (as identified in the initial application or by subsequent amendment with the approval of the PHA), for children thereafter born to or adopted by members of such family, and for aged or widowed parents of the homebuyer or spouse who may join the household.

(f) *Obligations with respect to other persons and property.* Neither the homebuyer nor any member of the homebuyer family shall interfere with rights of other occupants of the development, or damage the common property or the property of others, or create physical hazards.

(g) *Structural changes.* A homebuyer shall not make any structural changes in or additions to the home unless the PHA has first determined in writing that such change would not (1) impair the value of the unit, the surrounding units, or the development as a whole, or (2) affect the use of the home for residential purposes, or (3) violate HUD requirements as to construction and design.

(h) *Statements of condition and repair.* When each homebuyer moves in, the PHA shall inspect the home and shall give the homebuyer a written statement, to be signed by the PHA and the homebuyer, of the condition of the home and the equipment in it. Should the homebuyer vacate the home, the PHA shall inspect it and give the homebuyer a written statement of the repairs and other work, if any, required to put the home in good condition for the next occupant (see § 804.110(j)(1)). The homebuyer, homebuyer's representative, and a representative of the HBA may join in any such inspections by the PHA.

(i) *Maintenance of common property.* The homebuyer may participate in nonroutine maintenance of common property as discussed in § 804.110(d) and § 804.111(c).

(j) *Homebuyer's required monthly payment.* (1) The term "required monthly payment" as used herein means the monthly payment ("Contract Rent," see definition at § 860.403(a)) the homebuyer is required to pay as lease rental to the PHA on or before the first day of each month. Although the total monthly housing cost consists of the sum of the break-even amount (see § 804.108) and the debt service (payments of principal and interest) on the applicable share of the capital cost of the development, the homebuyer, so long as the homebuyer qualifies as low income, is not required to pay the full amount, but is assisted by HUD's annual contributions. The homebuyer's required monthly payment, which is based upon Family Income, shall be an amount in accordance with the schedule established by the PHA and approved by HUD in accordance with the U.S. Housing Act of 1937 (42 U.S.C. 1437 et seq.) and applicable HUD regulations (24 CFR Part 860, Subpart D, Minimum and Maximum Rent-Income Ratios, and Minimum Rent Requirements), provided, however, that the required monthly payment shall not be more than the sum of the monthly break-even amount and the monthly debt service amount shown on the Purchase Price Schedule for the home except that if the rent, including utilities, for comparable unsubsidized housing in the locality is lower, such lower amount may be established as the maximum if the PHA determines with HUD approval that this would be in the best interest of the development.

(2) The required monthly payment may be adjusted as a result of the PHA's regularly scheduled or specially scheduled reexamination of the Family Income and family composition. Interim changes may be made in accordance with the PHA's policy on reexaminations, or under unusual circumstances, at the request of the homebuyer, if both the PHA and the HBA agree that such action is warranted.

(3) The required monthly payment may also be adjusted by changes in the required percentage of income to reflect (i) changes in operating expenses as described in § 804.109 and (ii) changes in utility allowances.

(4) The PHA shall not refuse to accept monthly payments because of any other charges (i.e., other than overdue monthly payments) owed by the homebuyer to the PHA; however, by accepting monthly payments under such circumstances, the PHA shall not be deemed to have waived any of its rights and remedies with respect to such other charges.

(k) *Application on monthly payment.* The PHA shall apply the homebuyer's monthly payment as follows:

(1) To the credit of the homebuyer's EHPA (see § 804.110);

(2) To the credit of the homebuyer's NRMR (see § 804.111);

(3) For payment of monthly operating expense including contribution to operating reserve (see § 804.109).

(l) *Assignment and succession.* Until such time as the homebuyer obtains title to the home, it shall be used only to house a family of low income. Therefore:

(1) A homebuyer shall not assign any right or interest in the home or under the Homebuyers Ownership Opportunity Agreement without the prior written approval of the PHA and HUD.

(2) In the event of death, mental incapacity or abandonment of the home by the homebuyer, the person designated as the successor in the Homebuyers Ownership Opportunity Agreement shall succeed to the rights and responsibilities under the Agreement if that person is an occupant of the home at the time of the event and is determined by the PHA to meet all of the standards of potential for homeownership as set forth in § 804.104(f)(2). Such person shall be designated by the homebuyer at the time the Homebuyers Ownership Opportunity Agreement is executed. This designation may be changed by the homebuyer at any time. If there is no such designation or the designee is no longer an occupant of the home or does not meet the standards of potential for homeownership, the PHA may designate as the homebuyer any family member who was an occupant at the time of the event, who meets the standards of potential for homeownership, and who agrees in writing to assume the obligations of the Homebuyers Ownership Opportunity Agreement.

(3) If there is no qualified successor in accordance with paragraph (l)(2) of this section, the PHA shall terminate the Agreement and another family shall be selected except under the following circumstances: Where a minor child (or children) of the homebuyer family is in occupancy, then in order to protect the child's continued occupancy and opportunity for acquisition of ownership of the home, the PHA may approve an appropriate adult(s)

as legal guardian of the child's interest in the Homebuyers Ownership Opportunity Agreement, where the guardian undertakes, under a written agreement with the PHA, to perform the obligations of the Homebuyers Ownership Opportunity Agreement in the interest and behalf of the child, and where the child continues to live in the home with an adult to care for the child (the guardian or another person). In such case the income of the person who takes care of the child and is living in the home shall be included in Family Income for the purpose of determining the amount of the required monthly payment, but the provisions of paragraph (o) of this § 804.107 shall not be applicable during the period of such approved occupancy. The guardian and the person living in the home to care for the child shall have no right or interest in the home or under the Homebuyers Ownership Opportunity Agreement except in a fiduciary capacity on behalf of the children, and shall have no right to any amounts payable from the EHPA pursuant to § 804.110(j)(2) upon termination of the Agreement. During the period of guardianship, the home shall not be conveyed with PHA Homeownership Financing pursuant to § 804.116(a).

(m) *Termination by PHA.* (1) In the event the homebuyer should breach the Homebuyers Ownership Opportunity Agreement by failure to make the required monthly payment within ten days after its due date, by misrepresentation or withholding of information in applying for admission or in connection with any subsequent reexamination of income and family composition, or by failure to comply with any of the other homebuyer obligations under the Agreement, the PHA may terminate the Agreement 30 days after giving notice of its intention to do so in accordance with paragraph (m)(2) of this section.

(2) *Notice of termination by the PHA shall be in writing.* Such notice shall state (i) the reason for termination, (ii) that the homebuyer may respond to the PHA, in writing or in person, within a specified reasonable period of time regarding the reason for termination, (iii) that in such response homebuyer may be represented or accompanied by a person of the homebuyer's choice, including a representative of the HBA, (iv) that the PHA will consult the HBA concerning this termination, and (v) that unless the PHA rescinds or modifies the notice, the termination shall be effective at the end of the 30-day notice period.

(n) *Termination by the homebuyer.* The homebuyer may terminate the Homebuyers Ownership Opportunity Agreement by giving the PHA 30 days notice in writing of intention to terminate and vacate the home. In the event that the homebuyer vacates the home without notice to the PHA, the Agreement shall be terminated automatically and the PHA may dispose of, in any manner deemed suitable by it, any items of personal property left by the homebuyer in the home.

(o) *Transfer to public housing rental unit or Section 8 Existing Program.* (1) Inasmuch as the homebuyer was found eligible for admission to the development on the basis of having the necessary elements of potential for homeownership, continuation of eligibility requires continuation of this potential, subject only to temporary unforeseen changes in circumstances. Accordingly, in the event it should develop that the homebuyer no longer meets one or more of these elements of homeownership potential, the PHA shall investigate the circumstances and provide such counseling and assistance as may be feasible in order to help the family overcome the deficiency as promptly as possible. After a reasonable time, not to exceed 30 days from the date of evaluation of the results of the investigation the PHA shall make a reevaluation as to whether the family has regained the potential for homeownership or is likely to do so within a further reasonable time, not to exceed 30 days from the date of the reevaluation. Further extension of time may be granted in exceptional cases, but in any event, a final determination shall be made no later than 90 days from the date of evaluation of the results of the initial investigation. The PHA shall invite the HBA to participate in all investigations and evaluations.

(2) If the final determination of the PHA, after considering the views of the HPA, is that the homebuyer should be transferred to a suitable dwelling unit either in a PHA rental project, or through use of the PHA's Section 8 Existing Housing Program, the PHA shall give the homebuyer written notice of the PHA determination of the loss of homeownership potential and of the offer of transfer. The notice shall state that the transfer shall occur (i) as soon as a suitable rental unit is available for occupancy, or (ii) when the PHA has issued a Certificate of Family Participation, and has determined that a suitable unit is available, but no earlier than 30 days from the date of the notice, provided that an eligible successor for the homebuyer unit has been selected by the PHA. The notice shall also state that if the homebuyer should refuse to move under such circumstances, the family may be required to vacate the homebuyer unit, without further notice. The notice shall include a statement (i) that the homebuyer may respond to the PHA in writing or in person, within a specified reasonable time, regarding the reason for the determination and offer of transfer, (ii) that in such response the homebuyer may be represented or accompanied by a person of the homebuyer's choice, including a representative of the HBA, and (iii) that the PHA has consulted the HBA concerning this determination and offer of transfer.

(3) When a Homebuyers Ownership Opportunity Agreement is terminated pursuant to this paragraph (o), the amount in the homebuyer's EHPA shall be applied in accordance with the provisions of § 804.110(j).

§ 804.108 Break-even amount.

(a) *Definition.* The term "break-even amount" as used herein means the minimum average monthly amount required to provide funds for the items listed in the illustration below. A separate break-even amount shall be established for each size and type of dwelling unit, as well as for the Project as a whole. The break-even amount for EHPA and NRMR will vary by size and type of dwelling unit; similar variations as to other line items may be made if the PHA deems this equitable.

Illustration. The following is an illustration of the computation of the break-even amount based upon hypothetical amounts.

(1) Operating Expense (see § 804.109):		
Administration	$8.50	
Homebuyer services	2.00	
Project-supplied utilities	3.00	
Routine maintenance—		
Common property	3.00	
Protective services	2.00	
General expenses	6.50	
Nonroutine maintenance—		
Common property (Contribution to operating reserve	2.00	$27.00
(2) Earned Home Payments Account (see § 804.110)		12.00
(3) Nonroutine Maintenance Reserve (See § 804.111)		77.50
Break-Even Amount		46.50

The break-even amount does not include the monthly allowance for utilities which the homebuyer pays for directly, nor does it include any amount for debt service on the Project notes.

(b) *Excess over break-even.* When the homebuyer's required monthly payment (see § 804.107(j)) exceeds the applicable break-even amount, the excess shall constitute additional Project income and shall be deposited and used in the same manner as other Project income.

(c) *Deficit in monthly payment.* Where the required monthly payment is less than the amounts for EHPA and NRMR included in the break-even amount, the EHPA and NRMR shall nevertheless be credited with the amount for these accounts, and the deficiency shall be supplied out of the operating funds.

§ 804.109 Monthly operating expense, operating subsidy.

(a) *Definition and categories of monthly operating expense.* The term "monthly operating expense" means the monthly amount needed for the following purposes:

(1) *Administration.* Administrative salaries, travel, legal expenses, office supplies, postage, telphone, and telegrah, etc.;

(2) *Homebuyer services.* PHA expenses in the achievement of social goals, including costs such as salaries, publications, payments to the HBA to assist its operation, contract and other costs;

(3) *Utilities.* Those utilities (such as water), if any, to be furnished by the PHA as part of operating expenses;

(4) *Routine maintenance—common property.* For community building grounds, and other common areas, if any. The amount required for routine maintenance of common property depends upon the type of common property included in the development and the extent of the PHA responsibility for maintenance (see also § 804.109(c));

(5) *Protective services.* The cost of supplemental protective services paid by the PHA for the protection of persons and property;

(6) *General expense.* Premiums for fire and other insurance, payments in lieu of taxes to the local taxing body, collection losses, payroll taxes, etc;

(7) *Nonroutine maintenance—common property (Contribution to operating reserve).* An estimate of the amount required to accumulate an operating reserve for nonroutine maintenance and replacements of common property (see § 804.112(b)).

(b) *Monthly operating expense rate.* The monthly operating expense rate for each fiscal year shall be established on the basis of the PHA's HUD-approved operating budget for the fiscal year. The operating budget may be revised during the course of the fiscal year in accordance with HUD requirements. It is a subsequently determined that the actual operating expense for a fiscal year was more or less than the amount provied by the monthly operating expense established for that fiscal year, the rate of monthly operating expenses to be established for the next fiscal year may be adjusted to account for the difference. Such adjustment may result in a change in the required monthly payment (see § 804.107(j)(3)).

(c) *Provision for common property maintenance.* (1) During the period the PHA is responsible for the maintenance of common property, the annual operating budget and the monthly operating expense rate shall include the amount required for routine maintenance of all common property in the development, even though a number of the homes may have been acquired by homebuyers. During such period, this amount shall be computed on the basis of the total number of homes in the development (i.e., the annual amount budgeted for routine maintenance of common property shall be divided by the number of homes in the development, resulting in the annual amount for each home; this figure shall in turn be divided by 12 to determine the monthly amount to be included in the monthly operating expense (and in the break-even amount) for routine maintenance of common property).

(2) After the homeowners association assumes responsibility for maintenance of common property, the monthly operating expense (and break-even amount) shall include an amount equal to the monthly assessment by the homeowners association for the remaining homes owned by the PHA for routine or nonroutine maintenance of common property.

(d) *Monthly operating expense statement.* A statement showing the budgeted monthly amount allocated in the current operating budget to each operating expense category shall be provided to the HBA and copies shall be provided to homebuyers upon request.

(e) *Operating subsidy.* (1) Operating subsidy shall be paid to reimburse the PHA for the HUD-approved costs of Independent Public Accountant audits. Operating subsidy may also be paid to cover proposed expenditures approved by HUD for the following purposes:

(i) Operating Expenses for vacant units where the PHA shows to HUD's satisfaction that it is making every reasonable effort to fill the vacancies.

(ii) Collection losses due to payment delinquencies on the part of homebuyer families whose Agreement have been terminated, and who have vacated the home, and the actual cost of any maintenance (including repairs and replacements) necessary to put the vacant home in a suitable condition for a substitute homebuyer family. Operating subsidy may be made available for these purposes only after the PHA has previously utilized all available homebuyer credits.

(iii) The costs of HUD-approved homebuyer counseling.

(iv) HUD-approved costs for training of staff and Commissioners.

(v) Operating costs resulting from other unusual circumstances, as determined by HUD, justifying payment of operating subsidy.

(2) No operating subsidy shall be paid for utilities, routine maintenance or other items for which the homebuyer is responsibile (other than is necessary to put a vacant home in condition for a substitute family).

§ 804.110 Earned Home Payments account (EHPA).

(a) *Credits to the account.* The PHA shall establish and maintain a separate EHPA for each homebuyer. Since the homebuyer is responsible for maintaining the home, a portion of the required monthly payment equal to the PHA's estimate, approved by HUD, of the monthly cost for such routine maintenance, taking into consideration the relative type and size of the homebuyer's home, shall be set aside in the EHPA. In addition, this account shall be credited with (1) any voluntary payments made pursuant to § 804.110(f), and (2) any amount earned through the performance of maintenance as provided in § 804.110(d) and § 804.111(c)(1).

(b) *Charges to the account.* (1) If for any reason the homebuyer is unable or fails to perform any item of required maintenance as described in § 804.107(a), the PHA shall arrange to have the work done in accordance with the procedures established by the PHA and the HBA and the cost thereof shall be charged to the homebuyer's EHPA. Inspection of the home shall be made jointly by the PHA and the HBA.

(2) To the extent NRMR expense is attributable to the negligence of the homebuyer as determined by the HBA and approved by the PHA (see § 804.111), the cost thereof shall be charged to the EHPA.

(c) *Exercise of option; required amount in EHPA.* (1) The homebuyer may exercise an option to buy the home, by paying the applicable purchase price pursuant to § 804.113 or § 804.115, only after satisfying the following conditions precedent:

(i) Within the first two years of occupancy, the homebuyer has achieved a balance in the EHPA equal to 20 times the amount of the monthy EHPA credit as initially determined in accordance with paragraph (a) of this section.

(ii) The homebuyer has met, and is continuing to meet, the requirements of the Homebuyers Ownership Opportunity Agreement.

(iii) The homebuyer has rendered, and is continuing to render, satisfactory performance of the responsibilities to the HBA.

(2) When the homebuyer has met these conditions precedent, the PHA shall give the homebuyer a certificate in the form prescribed by HUD stating that the homebuyer may exercise the option to buy the home. After achieving he required minimum EHPA balance within the first two years of occupancy, the homebuyer shall continue to provide the required maintenance, thereby continuing to add to the EHPA. If the homebuyer fails to meet either the obigation to achieve

the minimum EHPA balance, as specified, or the obigation thereafter to continue adding to the EHPA, the PHA and the HBA shall investigate and take appropriate corrective action, including termination of the Agreement by the PHA in accordance with § 804.107(m). If the homebuyer fails to achieve the EHPA balance required under § 804.110(c)(1)(i) within the first two years, but the PHA determines that there are extenuating causes of such failure, or that the reasons for the failure may be eliminated by counseling or other assistance, the PHA may allow additional time to reach the required EHPA balance and a certificate may be granted after achievement of the required EHPA balance.

(3) Before deciding to issue a certificate, or to grant additional time for earning a certificate, or to terminate the Agreement for failure to meet the conditions for issuance of a certificate, the PHA shall consult with the HBA, but the final decision shall be the responsibility of the PHA.

(d) *Additional equity through maintenance of common property.* Homebuyers may earn additional EHPA credits by providing in whole or in part any of the maintenance necessary to the common property of the development. When such maintenance is to be provided by the homebuyer, this may be done and credit earned therefor only pursuant to a prior written agreement between the homebuyer and the PHA, covering the nature and scope of the work and the amount of credit the homebuyer is to receive. In such cases amount shall be charged to the appropriate maintenance account and credited to the homebuyer's EHPA upon completion of this work.

(e) *Investment of excess.* (1) When the aggregate amount of all EHPA balances exceeds the estimated reserve requirements for 90 days, the PHA shall notify the HBA and shall invest the excess it federally insured savings accounts, federally insured credit unions, and/or securities approved by HUD and in accordance with any recommendations made by the HBA. If the HBA wishes to participate in the investment program, it should submit periodically to the PHA a list of HUD-approved securities, bonds, or obligations which the association recommends for investment by the PHA of the funds in the EHPAs. Interest earned on the investment of such funds shall be prorated and credited to each homebuyer's EHPA in proportion to the amount in each such reserve account.

(2) Peridoically, but not less than semi-annually, the PHA shall prepare a statement showing (i) the aggregate amount of all EHPA balances, (ii) the aggregate amount of investments (savings accounts and/or securities) held for the account of all the homebuyer's EHPAs, and (iii) the aggregate univested balance of all the homebuyers' EHPAs. This statement shall be made available to any authorized representative of the HBA.

(f) *Voluntary payments.* To enable the homebuyer to acquire title to the home within a shorter period, the homebuyer may, either periodically or in a lump sum voluntarly make payments over and above the required monthly payments. Such voluntary payments shall be credited to the homebuyer's EHPA.

(g) *Delinquent monthly payments.* Under exceptional circumstances, as determined by the HBA and the PHA, a homebuyer's EHPA may be used to pay the homebuyer's delinquent required monthly payments, provided the amount used for this purpose does not seriously deplete the account and provided that the homebuyer agrees to cooperate in such counseling as may be made available by the PHA or the HBA.

(h) *Annual statement to homebuyer.* The PHA shall provide an annual statement to each homebuyer specifying at least (1) the amount in the EHPA, and (2) the amount in the NRMR. During the year, any maintenance or repair done on the dwelling by the PHA which is chargeable to the EHPA or to the NRMR shall be accounted for through a work order. A homebuyer shall receive a copy of all such work orders for the home.

(i) *Withdrawal and assignment.* The homebuyer shall have no right to use, assign, withdraw, or in any way dispose of the funds in the EHPA except as provided in this section or in § 804.113 and § 804.115.

(j) *Application of EHPA upon termination of Agreement.* (1) In the event a Homebuyers Ownership Opportunity agreement with the PHA is terminated (see § 804.107 (l), (m), (n) and (o)), the PHA shall charge against the homebuyer's EHPA the amounts required to pay (i) monthly payments the homebuyer is obligated to pay up to the date the home is vacated; (ii) the required monthly payment for the period the home is vacant, not to exceed 30 days from the date of notice of intention to vacate, or, if the homebuyer fails to give notice of intention to vacate, 30 days from the date the home is put in good condition for the next occupant in conformity with § 804.107; and (iii) the cost of any routine maintenance, and of any nonroutine maintenance attributable to the negligence of the homebuyer, required to put the home in good condition for the next occupant in conformity with § 804.107(h).

(2) If the EHPA balance is not sufficient to cover all of these charges, the PHA shall require the homebuyer to pay the additional amount due. If the amount due. If the amount in the account exceeds these charges, the excess shall be paid to the homebuyer.

(3) Settlement with the homebuyer shall be made promptly after the actual cost of repairs to the dwelling has been determined (see paragraph (j)(1)(iii) of this section), provided that the PHA shall make every effort to make such settlement within 30 days from the date the homebuyer vacates. The homebuyer may obtain a settlement within 7 days of the date the home is vacated, even though the actual cost of such repair has not yet been determined, if the homebuyer has given the PHA notice of intention to vacate at least 30 days prior to the date the homebuyer vacates and if the amount to be charged against the homebuyer's EHPA for such repairs is based on the PHA's estimate of the cost thereof (determined after consultation with the appropriate representative of the HBA).

(k) *EHPA balance.* All references in this subpart B to the EHPA balance or amount available in the homebuyer's EHPA shall be deemed to mean the net amount remaining in the account after taking into consideration any amounts due the PHA from the homebuyer, including delinquent required monthly payments.

§ 804.111 Nonroutine Maintenance Reserve (NRMR).

(a) *Purpose of reserve.* The PHA shall establish and maintain a separate NRMR for each home, using a portion of the homebuyer's required monthly payment. The purpose of the NRMR is to provide funds for the nonroutine maintenance of the home, which consists of the infrequent and costly items of maintenance and replacement shown on the Nonroutine Maintenance Schedule for the home (see paragraph (b) of this section). Such maintenance may include the replacement of dwelling equipment (such as range and refrigerator), replacement of roof, exterior painting, major repairs to heating and plumbing systems, etc. The NRMR shall not be used for nonroutine maintenance of common property, or for nonroutine maintenance relating to the home to the extent such maintenance is attributable to the homebuyer's negligence or to defective materials or workmanship.

(b) *Amount of reserve.* The amount of the monthly payments to be set aside for NRMR shall be determined by the PHA, with the approval of HUD, on the basis of the Nonroutine Maintenance Schedule showing the amount likely to be needed for nonroutine maintenance of the home during the term of the Homebuyers Ownership Opportunity Agreement,

taking into consideration the type of construction and dwelling equipment. This Schedule shall (1) list each item of nonroutine maintenance (e.g., range, refrigerator, plumbing, heating system, roofing, the flooring, exterior painting, etc.), (2) show for each listed item the estimated frequency of maintenance or useful life before replacement, the estimated cost of maintenance or replacement (including installation) for each occasion, and the annual reserve requirement, and (3) show the total reserve requirements for all the listed items, on an annual and a monthly basis. This Schedule shall be prepared by the PHA and approved by HUD as part of the submission required to determine the financial feasibility of the Project. The Schedule shall be revised after approval of the working drawings and specifications, and shall thereafter be reexamined annually in the light of changing economic conditions and experience.

(c) *Charges to NRMR.* (1) The PHA shall provide the nonroutine maintenance necessary for the home and the cost thereof shall be funded as provided in paragraph (C)(2) of this section. Such maintenance may be provided by the homebuyer but only pursuant to a prior written agreement with the PHA covering the nature and scope of the work and the amount of credit the homebuyer is to receive. The amount of any credit shall, upon completion of the work, be credited to the homebuyer's EHPA and charged as provided in paragraph (c)(2) of this section.

(2) The cost of nonroutine maintenance shall be charged to the NRMR for the home except that (i) to the extent such maintenance is attributable to the fault or negligence of the homebuyer, the cost shall be charged to the homebuyer's EHPA after consultation with the HBA if the homebuyer disagrees, and (ii) to the extent such maintenance is attributable to defective materials or workmanship not covered by warranty, or even though covered by warranty if not paid for thereunder through no fault or negligence of the homebuyer, the cost shall be charged to the appropriate operating expense account of the Project.

(3) In the event the amount charged against the NRMR exceeds the balance therein, the difference (deficit) shall be made up from continuing monthly credits to the NRMR based upon the homebuyer's monthly payments. If there is still a deficit when the homebuyer acquires title, the homebuyer shall pay such deficit at settlement (see paragraph (d)(2) of this section).

(d) *Transfer of NRMR.* (1) In the event the Homebuyer's Ownership Opportunity Agreement is terminated, the homebuyer shall not receive any balance or be required to pay any deficit in the NRMR. When a subsequent homebuyer moves in, the NRMR shall continue to be applicable to the home in the same amount as if the preceding homebuyer had continued in occupancy.

(2) In the event the homebuyer purchases the home, and there remains a balance in the NRMR, the PHA shall pay such balance to the homebuyer at settlement. In the event the homebuyer purchases and there is a deficit in the NRMR, the homebuyer shall pay such deficit to the PHA at settlement.

(e) *Investment of excess.* (1) When the aggregate amount of the NRMR balances for all the homes exceeds the estimated reserve requirements for 90 days the PHA shall invest the excess in federally insured savings accounts, federally insured credit unions, and/or securities approved by HUD. Income earned on the investment of such funds shall be prorated and credited to each homebuyer's NRMR in proportion to the amount in each reserve account.

(2) Periodically, but not less often than semi-annually, the PHA shall prepare a statement showing (i) the aggregate amount of all NRMR balances, (ii) the aggregate amount of investments (savings accounts and/or securities) held for the account of the NRMRs, and (iii) the aggregate uninvested balance of the NRMRs. A copy of this statement shall be made available to any authorized representative of the HBA.

§ 804.112 Operating reserve.

(a) *Purpose of reserve.* To the extent that total operating receipts (including any operating subsidy) exceed total operating expenditures of the development, the PHA shall establish an operating reserve up to the maximum operating reserve for the development (see § 804.112(d)). The purpose of this reserve is to provide funds for: (1) the infrequent but costly items of nonroutine maintenance and replacements of common property, taking into consideration the types of items which constitute common property, such as nondwelling structures and equipment, and in certain cases, common elements of dwelling structures, (2) nonroutine maintenance for the homes to the extent such maintenance is attributable to defective materials or workmanship not covered by warranty, or covered by warranty but not paid for thereunder through no fault or neglect of the homebuyer, (3) working capital for payment of a deficit in a homebuyer's NRMR, until such deficit is offset by future required monthly payments by the homebuyer or at settlement in the event the homebuyer should purchase, and (4) a deficit in the operation of the development for a fiscal year, including a deficit resulting from required monthly payments totaling less than the break-even amount for the development.

(b) *Nonroutine Maintenance-common property (Contribution to operating reserve).* The amount under this heading to be included in operating expense (and in the break-even amount) established for the fiscal year (see § 804.108 and § 804.109) shall be determined by the PHA, with the approval of HUD, on the basis of estimates of the monthly amount needed to accumulate an adequate reserve for the items described in paragraph (a)(1) of this section. This amount shall be subject to revision in the light of experience. This contribution to the operating reserve shall be made only during the period the PHA is responsible for the maintenance of any common property; and during such period, the amount shall be determined on the basis of the requirements of all common property in the development in a manner similar to that explained in § 804.109(c). When the operating reserve reaches the maximum authorized in accordance with § 804.112(d) below, the break-even (monthly operating expense) computations (see § 804.108 and § 804.109) for the next and succeeding fiscal years need not include a provision for this contribution to the operating reserve unless the balance of the reserve is reduced below the maximum during any such succeeding fiscal year.

(c) *Transfer to homeowners association.* The PHA shall be responsible for and shall retain custody of the operating reserve until the homeowners acquire voting control of the homeowners association (see § 804.118(d) and § 804.119(f)). When the homeowners acquire voting control, the homeowners association shall then assume full responsibility for management and maintenance of common property under a plan approved by HUD, and there shall be transferred to the homeowners association a portion of the operating reserve then held by the PHA. The amount of the reserve to be transferred shall be based upon the proportion that one-half of budgeted routine expense (used as a basis for determining the current maximum operating reserve—see paragraph (d) of this section) bears to the approved maximum operating reserve. Specifically, the portion of operating reserve to be transferred shall be computed as follows: obtain a percentage by dividing one-half of budgeted routine expense by the approved maximum operating reserve, and multiply the actual operating reserve balance by this percentage.

(d) *Establishment of maximum operating reserve.* The maximum operating reserve that may be retained by the PHA at the end of any fiscal year shall be the sum of (1) one-half of total routine expense included in the operating budget approved for the next fiscal year, and (2) one-third of total break-even amounts included in the operating budget approved for the next fiscal year; provided that such maximum may be increased if necessary as determined or approved by HUD. Total routine expense means the sum of the amounts budgeted for administration, homebuyers services, PHA-supplied utilities, routine maintenance of common property, protective services, and general expense or other category of day-to-day routine expense (see § 804.109 above for explanation of various categories of expense).

(e) *disposition of reserve.* If, at the end of a fiscal year, there is an excess over the maximum operating reserve, the excess shall be prorated to the NRMR of each homebuyer whose total required monthly payments paid for the fiscal year exceeded the total break-even amount for the year. The amount to be credited to each eligible homebuyer's NRMR shall be determined as follows:

(1) Compute the amount by which each homebuyer's total required monthly payments paid during the fiscal year exceeded the total break-even amount for the year, and compute the aggregate of these individual excess amounts. Those homebuyers whose required monthly payments for the year were less than the break-even amount for the year, and those homebuyers who at the time of the computation are delinquent in payment of any required monthly payments, shall not be eligible for the additional credit, and shall not be included in the computation.

(2) Form a fraction in which the numerator is the individual homebuyer's excess over break-even, and the denominator is the aggregate excess for all the homebuyers, as determined in (1) above.

(3) Multipy the total amount to be prorated by the fraction formed in (2) above. The amount so determined shall be credited to the homebuyer's NRMR. Following the end of the fiscal year in which the last home has been conveyed by the PHA, the balance of the operating reserve held by the PHA shall be paid to HUD.

§ 804.113 Achievement of ownership by initial homebuyer.

(a) *Determination of initial purchase price.* The PHA shall determine the initial purchase price of the home by two basic steps, as follows:

Step 1: The PHA shall take the Estimated Total Development Cost (including the full amount for contingencies as authorized by HUD) of the development as shown in the Development Cost Budget in effect upon award of the Construction Contract or execution of the Contract of Sale, and shall deduct therefrom the amounts, if any, attributed to (1) relocation costs, (2) counseling and training costs, and (3) the cost of any community, administration or management, and furnishings attributable to such facilities as set forth in the development program for the development. The resulting amount is herein called Estimated Total Development Cost for Homebuyers.

Step 2: The PHA shall apportion the Estimated Total Development Cost for Homebuyers among all the homes in the development. This apportionment shall be made by obtaining an HUD appraisal of each home and adjusting such appraised values (upward or downward) by the percentage difference between the total of the appraisal for all the Homes and the Estimated Total Development Cost For Homebuyers. The adjusted amount for each home shall be the initial purchase price for that home.

(b) *Purchase price schedule.* Each homebuyer shall be provided with a Purchase Price Schedule showing (1) the monthly-declining purchase price over a 30-year period,[1] commencing with the initial purchase price on the first day of the month following the effective date of the Homebuyers Ownership Opportunity Agreement and (2) the monthly debt service amount upon which the Schedule is based. The Schedule and debt service amount shall be computed on the basis of the initial purchase price, a 30-year period, and a rate of interest equal to the minimum loan interest rate as specified in the Annual Contributions Contract for the Project on the date of HUD approval of the Development Cost Budget, described in paragraph (a) of this section, rounded up, if necessary, to the next multiple of one-fourth of the percent (¼ percent).

(c) *Methods of purchase.* (1) The homebuyer may achieve ownership when the amount in his EHPA, plus such portion of the NRMR as he wishes to use for the purchase, is equal to the purchase price as shown at that time on his Purchase Price Schedule plus all Incidental Costs (Incidental Costs means the costs incidental to acquiring ownership, including, but not limited to, the costs for a credit report, field survey, title examination, title insurance, and inspections, the fees for attorneys other than the PHA's attorneys, mortgage application and organization, closing and recording, and the transfer taxes and loan discount payment, if any). If for any reason title to the home is not conveyed to the homebuyer during the month in which such circumstances occur, the purchase price shall be fixed at the amount specified for such month and the homebuyer shall be refunded (i) the net additions, if any, credited to the EHPA subsequent to such month, and (ii) such part of the required monthly payments made by the homebuyer after the purchase price has been fixed which exceeds the sum of the break-even amount attributable to the unit and the interest portion of the debt service shown in the Purchase Price Schedule.

(2) Where the sum of the purchase price and Incidental Costs is greater than the amounts in the homebuyer's EHPA and NRMR as described in paragraph (c)(1) of this section, the homebuyer may buy the home (i) by paying the excess amount with sums obtained through financing other than PHA Homeownership Financing or otherwise, or (ii) if eligible, by obtaining PHA Homeownership Financing under § 804.116(a) for all or any portion of the unpaid balance of the purchase price, and paying the Incidental Costs and any remaining unpaid balance of the purchase price by application of EHPA and NRMR balances or otherwise. The purchase price shall be the amount shown on the Purchase Price Schedule for the month in which the settlement date for the purchase occurs.

(3) If the PHA finances purchase of the home in accordance with § 804.116(a), the balances in the homebuyer's EHPA and NRMR (after payment pursuant to § 804.111(d)(2) of any deficit in the NRMR) shall be applied in the following order:

(i) To payment of the initial financing costs specified in § 804.116(a)(2)(iii).

(ii) To payment of the purchase price.

If application of the EHPA and NRMR does not provide sufficient funds for item (i) the homebuyer shall pay the deficiency in cash. PHA Homeownership Financing shall be limited to the unpaid balance of the purchase price, and shall not be available to cover any part of item (i).

§ 804.114 Resale at profit during first five years.

(a) *Promissory note.* (1) If a homebuyer takes ownership (regardless of whether ownership is achieved under § 804.113 or § 804.115) at any time within the five-year period commencing with the first day of the month following the effective date of the Homebuyers Ownership Opportunity Agreement, the homebuyer shall sign a note, in an amount determined in ac-

[1] Change to 25-year period where the ACC for the Project has a term of 25 years.

cordance with § 804.114(a)(2), obligating the homebuyer to make a payment to the PHA if the homebuyer resells the home at a profit within such 5-year period. If, however, the homeowner should purchase and occupy another home within one year (18 months in case of a newly constructed home) of the resale of the Turnkey III home, the PHA shall refund to the homeowner the amount previously paid under the note, less the amount, if any, by which the resale price of the Turnkey III home exceeds the acquisition price of the new home, provided that application for such refund shall be made no later than 30 days after the date of acquisition of the new home.

(2) The note to be signed by the homebuyer pursuant to paragraph (a)(1), of this section shall be a non-interest-bearing promissory note to the PHA, which shall be in the form prescribed by HUD. The note shall be executed at the time the homebuyer becomes a homeowner and shall be secured by a mortgage. If purchase of the home was financed in whole or in part by mortgage financing other than PHA financing, the mortgage to the PHA under this paragraph (2) shall be subordinated to the lien of such other mortgage. The amount of the note shall be computed by taking the HUD-appraised value of the home at the time the homebuyer becomes a homeowner and subtracting (i) the homebuyer's purchase price plus the Incidental Costs and (ii) the increase in value of the home, determined by appraisal, caused by improvements paid for by the homebuyer with funds from sources other than the EHPA or NRMR. To protect the homeowner, the note shall provide that the amount payable under it shall in no event be more than the net profit on the resale, that is, the amount by which the resale price exceeds the sum of (i) the homebuyer's purchase price plus the Incidental Costs, (ii) the costs of the resale, including commissions and mortgage prepayment penalties, if any, and (iii) the increase in value of the home, determined by appraisal, due to improvements paid for as a homebuyer (with funds from sources other than the EHPA or NRMR) or as a homeowner.

(3) Amounts collected by the PHA under such notes shall be retained by the PHA for use in making refunds pursuant to paragraph (a)(1) of this section. After expiration of the period for the filing of claims for such refunds, any remaining amounts shall be applied (1) to reduce the PHA's capital indebtedness on the Project and (ii) after such indebtedness has been paid, for such purposes as may be authorized or approved by HUD under such Annual Contributions Contract as the PHA may then have with HUD.

Illustration. If the homeowner's purchase price is $10,000, the Incidental Costs are $500, the value added by improvements is $1,000, and the HUD-appraised value at the time ownership is acquired is $17,000, the note computation would be as follows:

HUD appraised value		$17,000
Homeowner's purchase price	10,000	
Incidental Costs	500	
Improvements	1,000	−11,000
Note amount		5,500

If the homeowner, in this example, resells the home during the first year for a sales price of $17,500, has resale costs of $1,600 (including a sales commission), and has added $1,500 value by further improvements, the homeowner would be required to pay the PHA $5,500, as indicated in the following computations:

Resale price		$17,500
Resale costs	1,600	
Purchase price and Incidental Costs	10,500	
All improvements	2,500	−14,600
Payable to PHA		2,900

(b) *Residency requirements.* The five-year note period shall be extended by any period during which the homebuyer/homeowner rents or otherwise does not use the home as a principal place of residence. Only the actual amount of time of residence as a homebuyer or homeowner is counted and the note shall be in effect until a total of five years time of residence has elapsed, at which time the homeowner may request a release from the note, and PHA shall provide the release.

§ 804.115 Achievement of ownership by subsequent homebuyer.

(a) *Definition.* In the event the initial homebuyer vacates the home before having acquired ownership, a subsequent occupant who enters into a Homebuyer's Ownership Opportunity Agreement and who is not a successor pursuant to § 804.107(1)(2) is herein called a "subsequent homebuyer."

(b) *Determination of initial purchase price.* The initial purchase price for a subsequent homebuyer shall be the lower of the current appraised value, or the current replacement cost of the home, both as determined or approved by HUD.

(c) *Purchase price schedule.* Each subsequent homebuyer shall be provided with a Purchase Price Schedule showing (1) the monthly declining purchase price over a 30-year period[1] commencing with the first day of the month following the effective date of the Homebuyers Ownership Opportunity Agreement of the subsequent homebuyer, and (2) the level monthly debt service amount necessary for complete amortization of the initial purchase price over such period at the interest rate used to complete the Purchase Price Schedule for the initial homebuyer.

(d) *Disposition of excess over maximum operating reserve after payment of PHA debt.* After payment in full of the PHA's debt, if there are any subsequent homebuyers, any amounts in the operating reserve for the development in excess of the maximum reserve level shall be apportioned to the NRMRs of the subsequent homebuyers in accordance with § 804.112(e).

§ 804.116 PHA Homeownership Financing; Conveyance of home.

(a) *PHA Homeownership Financing.* (1) *Availability of PHA Financing.* A homebuyer may, if eligible, buy the home by obtaining PHA Homeownership Financing for all or any portion of the purchase price, and by paying at settlement all of the initial financing costs specified in paragraph (a)(iii) of this section, as well as any unpaid balance of the purchase price not covered by the financing. The PHA shall provide counseling to homebuyers eligible for PHA Homeownership Financing.

(2) *Eligibility.* A homebuyer shall be eligible for PHA Homeownership Financing if:

(i) The PHA determines that other suitable financing is not available.

(ii) The homebuyer's income is at the level and is likely to continue at the level at which 25 percent of monthly Family Income is at least equal to the sum of the monthly debt service amount shown on the homebuyer's Purchase Price Schedule and the PHA's estimate of the following monthly payments and allowances as approved by HUD:

(A) Payment for fire and extended coverage insurance on the home;

(B) Payment for taxes, special assessments and all other charges which are a lien against the property, including real property taxes and assessments;

(C) Payment for the PHA mortgage servicing charge;

(D) Payment for maintenance and operation of any common property;

(E) Amount allowed as necessary for maintenance of the home; and

(F) Amount allowed as necessary for utilities for the home.

(iii) The homebuyer can pay at settlement all of the following initial financing costs; the amounts necessary for settlement costs, the initial premium for fire and extended coverage insurance carried on the home after conveyance, and a contribution for the

[1] Change to 25-year period where the ACC for the Project has a term of 25 years (see § 804.101(b)(3)).

Homeowner's Reserve in an amount equal to twelve time the sum of items (2)(ii)(A) through (E) (available balances in the homebuyer's EHPA and NRMR, may be applied for the initial financing costs in accordance with § 804.113(c)(3)).

(3) *Notice of Financing Availability.* If the PHA determines that a homebuyer is eligible for PHA Homeownership Financing, the PHA shall notify the homebuyer in writing. After the PHA has given the notice, the homebuyer shall continue to have all of the rights and obligations of a homebuyer. However, during this period there shall be no further reduction in the purchase price under the purchase price schedule, and the purchase price at the time the homebuyer purchase the home shall be the amount shown on the purchase price schedule for the month the PHA gave notice of eligibility for financing.

(4) *Promissory Note and Mortgage.* (i) When PHA Homeownership Financing is utilized, the homebuyer shall execute and deliver a promissory note and mortgage at settlement on the home. The principal amount of the mortgage debt shall be equal to the unpaid balance of the purchase price of the home as determined in accordance with § 804.113 or § 804.115, as applicable.

(ii) The mortgage shall be reduced in accordance with a schedule providing for monthly reductions and complete amortization of the mortgage debt over a period commencing on the first day of the month following the date of conveyance and ending on the first day after the end of the period covered by the homebuyer's Purchase Price Schedule, and the schedule shall also show the level monthly debt service amount needed to complete the amortization over this period. The rate of interest upon which the schedule is computed shall be the same rate used to compute the Purchase Price Schedule for an initial homebuyer.

(iii) The promissory note and mortgage shall be in form approved by HUD. The promissory note shall, among other things, provide:

(A) For a Homeowner's Reserve (in the amount specified in paragraph (a)(2)(iii) of this section) to be held by the PHA to be used if the homeowner has no other funds reasonably available to pay for expenses such as maintenance, insurance and taxes;

(B) For monthly mortgage payments sufficient to cover (1) the monthly debt service (principal and interest) shown on the schedule, (2) the PHA mortgage servicing charge, (3) the premiums for fire and extended coverage insurance, (4) taxes, special assessments and other charges which are a lien against the property, and (5) payment for maintenance and operation of common property, if any.

(C) For a reduction, in the event of a reduction in the homebuyer's family income, of the portion of the monthly mortgage payment attributable to debt service, provided that in any event the homeowner shall be required to pay at a minimum the other elements listed in paragraph (a)(4)(iii)(b) which are included in the monthly mortgage payment. Since the mortgage payments by a mortgagor-homeowner are not "rental," the mortgage payments are not subject to the minimum or maximum rental provisions in section 3(1) of the Act, or the HUD regulations thereunder (Part 860, Subpart D).

(D) That for each month in which the homeowner makes the required monthly mortgage payment, the mortgage debt shall be reduced in accordance with the schedule, notwithstanding any reduction pursuant to paragraph (a)(4)(iii)(C) in the portion of the monthly mortgage payment attributable to debt service.

(iv) The mortgage shall secure performance of all the terms of the promissory note, shall be a first lien on the right, title and interest conveyed to the homebuyer by the PHA, and shall be promptly recorded by the PHA.

(5) *Insurance.* The PHA shall obtain fire and extended coverage insurance for protection of the PHA and the homeowner in an amount and on terms acceptable to HUD, which shall be effective upon conveyance to the homeowner, and shall be maintained until the full amortization of the homeowner's mortgage debt to the PHA. The PHA shall enforce the homeowner's obligation to pay amounts sufficient to cover the premiums for fire and extended coverage insurance on the home, but shall in any event carry the insurance out of any available funds, subject to collection from the homeowner. The homeowner shall make payments to the PHA (included in the monthly payments) to cover the cost of the insurance.

(6) *Mortage Servicing Fees.* The amount of the mortgage servicing fees collected from the homeowner under the promissory note may be retained by the PHA, and utilized as project operating receipts.

(7) *Reports to HUD.* The PHA shall furnish to HUD all information and reports concerning homes conveyed with PHA Homeownership Financing as required by HUD, and at the times required by HUD.

(8) *Repossession of homes.* Where the PHA reacquires a home financed with PHA Homeownership Financing, whether by bidding in the home at foreclosure or by voluntary assignment from the mortgagor, the PHA shall endeavor to market the home to an eligible Turnkey III homebuyer in accordance with this Subpart.

(b) *Conveyance of home.* When the homebuyer is to obtain ownership as described in § 804.113 or § 804.115, a closing date shall be mutually agreed upon by the parties. On the closing date the homebuyer:

(1) shall pay the required amount of money to the PHA, and receive a deed for the home, and

(2) if the home is conveyed with PHA Homeownership Financing pursuant to paragraph (a) of this section, shall deliver to the PHA the promissory note and first mortgage required in connection with such financing, and

(3) if the home is conveyed at any time within the five-year period commencing with the first day of the month following the effective date of the Homebuyers Ownership Opportunity Agreement, shall deliver to the PHA the promissory note and subordinate mortgage required pursuant to § 804.114.

(c) *Remittance of Purchase Price Payments to HUD.* The PHA shall, within 60 days after the end of each fiscal year, remit to HUD all amounts received on account of the purchase prices of the homes ("Purchase Payments") for application to payment of principal and interest on debt incurred by the PHA in connection with development of the project. After payment in full of such development debt, Purchase Payments shall be paid to HUD or applied as directed by HUD. Purchase Payments include all amounts applied to the homebuyer's purchase price from the homebuyer's EHPA and NRMR, any cash paid in by the homebuyer for application to the purchase price, and, where a home has been conveyed with PHA Homeownership Financing, any portion of the mortgage payments attributable to payment of the debt service on the mortgage.

§ 804.117 Responsibilities of homeowner.

After acquisition of ownership each homeowner shall be required to pay to the PHA or to the homeowners association, as appropriate, a monthly fee for (a) the maintenance and operation of community facilities including utility facilities, if any, (b) the maintenance of grounds and other common areas and, (c) such other purposes as determined by the PHA or the homeowners association as appropriate, including taxes and a provision for a reserve. This requirement shall be set out in the planned unit development or condominium documents which shall be recorded prior to conveyance of any of the homes. If the PHA, for any reason, has failed to record such requirement prior to the first conveyance, the PHA shall require each homebuyer, as a precondition for convey-

ance, to contract with the PHA at settlement to make such payments. Such agreement shall be enforceable by the PHA or the homeowners association.

§ 804.118 Homeowners association—planned unit development (PUD).

If the development is organized as a planned unit development:

(a) *Ownership and maintenance of common property.* The common areas, sidewalks, parking lots, and other common property in the development shall be owned and maintained as provided for in the approved planned unit development (PUD) program except that the PHA shall be responsible for maintenance until such time as the homeowners association assumes such responsibility (see § 804.112(d)).

(b) *Title restrictions.* The title ultimately conveyed to each homebuyer shall be subject to restrictions and encumbrances to protect the rights and property of all other owners. The homeowners association shall have the right and obligation to enforce such restrictions and encumbrances and to assess owners for the cost incurred in connection with common areas and property and other responsibilities.

(c) *Votes in association.* There shall be as many votes in the association as there are homes in the development, and, at the outset, all the voting rights shall be held by the PHA. As each home is conveyed to the homebuyer, one vote shall automatically go to the homeowner so that, when all the homes have been conveyed, the PHA shall no longer have any interest in the homeowners association.

(d) *Voting control.* The PHA shall not lose its majority voting interest in the association as soon as a majority of the homes have been conveyed, unless the law of the state requires control to be transferred at a particular time, or the PHA so desires. If permitted by state law, provision shall be made for each home owned by the PHA to carry three votes, while each home owned by a homeowner shall carry one vote. Under this weighted voting plan, the PHA shall continue to have voting control until 75 percent of the homes have been acquired by homeowners. However, at its discretion, the PHA may transfer voting control to the homeowners when at least 50 percent of the homes have been acquired by the homeowners.

§ 804.119 Homeowners association—condominium.

If the development is organized as a condominium:

(a) The PHA at the outset shall own each condominium unit and its undivided interest in the common areas;

(b) All the land, including that land under the housing units, shall be a part of the common areas;

(c) The homeowners association shall own no property but shall maintain and operate the common areas for the individual owners of the condominium units except that the PHA shall be responsible for maintenance until such time as the homeowners association assumes such responsibility (see § 804.112(d));

(d) The percentage of undivided interest attached to each condominium unit shall be based on the ratio of the value of the units to the value of all units and shall be fixed when the development is completed. This percentage shall determine the homeowner's liability for the maintenance of the common areas and facilities;

(e) Each homeowner's vote in the homeowners association shall be identical with the percentage of undivided interest attached to his unit; and

(f) The PHA shall not lose its majority voting interest in the association as soon as units representing 50 percent of the value of all units have been conveyed, unless the law of the state requires control to be transferred at a particular time or the PHA so desires. For voting purposes, until units representing 75 percent of the value of all units have been acquired by homeowners, the total undivided interest attributable to the homes owned by the PHA shall be multiplied by three, if such weighted voting plan is permitted by state law. Under this plan, the PHA shall continue to maintain voting control until 75 percent of the homes have been acquired by homeowners. However, at its discretion, the PHA may transfer voting control to the homeowners when units representing at least 50 percent of the value of all units have been acquired by the homeowners.

§ 804.120 Relationship of homeowners association to HBA.

The HBA and the PHA may make arrangements to permit homebuyers to participate in homeowners association matters which affect the homebuyers. Such arrangements may include rights to attend meetings and to participate in homeowners association deliberations and decisions.

(Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d); United States Housing Act of 1937 (42 U.S.C. 1437 et seq.).

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Development Amendments of 1978, P.L. 95-557, 92 Stat. 2080, this proposed rule has been granted waiver of Congressional review requirements in order to permit publication at this time for public comment.

Issued at Washington, D.C., December 14, 1978.

LAWRENCE B. SIMONS,
Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 78-36073 Filed 12-27-78; 8:45 am]

federal register

THURSDAY, DECEMBER 28, 1978

PART IX

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

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LIGHT TRANSPORT AIRPLANE AIRWORTHINESS REVIEW

[4910-13-M]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Parts 23, 25, and 135]

[Docket No. 18600; Notice No. 78-17]

LIGHT TRANSPORT AIRPLANE AIRWORTHINESS REVIEW

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice announcing a new Regulatory Review.

SUMMARY: This notice: (1) announces the Light Transport Airplane Airworthiness Review; (2) announces the availability of FAA proposals; and (3) invites interested persons to comment on those proposals or to submit counter proposals for consideration at a Light Transport Airplane Airworthiness Review Conference. The objective of the Review is to develop airworthiness standards for multiengine airplanes having a suggested maximum passenger seating configuration, excluding any pilot seat, of about 30 seats and a maximum gross weight of about 35,000 pounds.

DATES: The following dates are targeted for the Review:

- Release Compilation of FAA proposals: December 1978.
- Announce forum and conference sites and dates: January 1979.
- Hold discussion forum on FAA proposals: March 1979.
- Hold review conference: May 1979.
- Issue Notice of Proposed Rule Making: December 1979.
- Comments on Notice due: March 1980.
- Issue final rule: December 1980.

ADDRESS: The compilation of FAA proposals may be requested now, and will be available at the following address. Federal Aviation Administration, Flight Standards Service, Airworthiness Review Branch, (AFS-910), 800 Independence Ave., S.W., Washington, D.C. 20591

FOR FURTHER INFORMATION CONTACT:

Thomas E. McSweeny, Airworthiness Review Branch, (AFS-910), Flight Standards Service, Federal Aviation Administration, 800 Independence Ave., S.W., Washington, D.C. 20591; telephone: 202-755-8714.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Current airworthiness standards exist for two basic designations of airplanes: Part 23 for airplanes 12,500 pounds or under having nine or less passenger seats and Part 25 for transport category airplanes. Commuter airline and air taxi operations in the United States, which have grown substantially in recent years, have demonstrated a need for airplanes which are not fully transport category but exceed the size limitations of Part 23.

THREE PHASE PROGRAM

Recognizing the need for improved standards for airplanes intended for these operations, the Administrator has initiated a three-phase program. The first phase was the issuance of revised Part 135, "Air Taxi Operators and Commercial Operators," on September 26, 1978 (43 FR 46742; October 10, 1978). This action aligned the rules for these operations more closely with those of Part 121, "Certification and Operations: Domestic Flag, and Supplemental Air Carriers and Commercial Operators of Large Aircraft." The second phase was the issuance of Notice No. 78-14, "Airworthiness Standards: Reciprocating and Turbopropeller Powered Multiengine Airplanes," on September 26, 1978 (43 FR 46734; October 10, 1978). That notice proposed an increase in approved takeoff weights and passenger seating capacities for small airplanes. The third phase is the Light Transport Airplane Airworthiness Review. This Review contemplates the development of a new Part 24 of the Federal Aviation Regulations which will provide a separate set of airworthiness standards for multiengine airplanes that have a suggested maximum passenger seating configuration, excluding any pilot seat, of about 30 seats and a maximum gross weight of about 35,000 pounds.

Part 24 airworthiness standards are not necessarily meant to be made up of existing Part 23 or Part 25 rules. However, the airworthiness rules which exist for Part 23 and Part 25 category airplanes and appropriate portions of Appendix A of Part 135 can serve as a foundation for the proposed Part 24 requirements with appropriate modifications as suggested by interested persons.

FAA PROPOSALS

The FAA wishes to obtain the participation of all interested persons in resolving the regulatory issues that may be involved. The most effective procedure for attaining that objective is the Light Transport Airplane Airworthiness Review announced in this notice and the dialogue that will take place during the associated discussion forum and review conference.

A compilation of FAA proposals for a new Part 24 of the Federal Aviation Regulations has been prepared and is being made available to any interested person who requests a copy and to those who have participated in a previous FAA Regulatory Review. This compilation does not represent a final FAA position but is presented as a medium for encouraging public comments to aid in developing a notice of proposed rule making for Light Transport Airplane Airworthiness Standards. Interested persons are invited to review the FAA proposals so that they may be discussed at a forum which will be held in March 1979 before the May 1979 Conference when formal written submissions will be considered.

SCOPE OF THE REGULATORY REVIEW

The scope of the Light Transport Airplane Airworthiness Review Program is limited to those proposals which are appropriate for the development of airworthiness standards for multiengine airplanes having a suggested maximum of about 30 passenger seats, excluding any pilot seat, and with a gross weight of about 35,000 pounds. Existing airworthiness standards for Part 23 and Part 25 category airplanes and appropriate portions of Appendix A of Part 135 serve as a foundation for the Part 24 proposals. However, new or additional standards believed to be appropriate are within the scope of the review and should be submitted.

INITIAL PUBLIC MEETINGS

Because of the magnitude of this Review, a forum will be held in march 1979 so that interested persons have the opportunity to receive any clarification needed of the FAA proposals. At this forum, only discussion and clarification of FAA proposals will be entertained. There will be no decision-making and counter proposals will not be considered. A Review Conference will be held during May 1979. Formal comments, proposals and counter proposals will be discussed during this conference.

Specific information about dates and locations of the forum and conference will be announced in a notice to be published in the FEDERAL REGISTER in January 1979. Included in that notice will be information regarding the written submissions for the Conference, including the number of copies required, their screening for acceptability and their entry into the docket at the conference. A description of the content and format for written submissions is presented in this notice for advance information for interested persons to prepare for the conference to be held in May 1979.

IMPROVING GOVERNMENT REGULATIONS

To implement the President's policy on improving government regulations, agencies must consider alternative ways to deal with a problem and an analysis of the economic consequences of each alternative. Thus, it is requested that each FAA proposal addressed

and each proposal submitted be supported by available economic data relative to the costs and benefits of that proposal. Nonquantifiable impacts should also be stated as fully as possible.

REQUIRED FORMAT AND INFORMATION

The FAA has found during past Regulatory Review Programs that the processing of regulatory proposals is greatly facilitated when they are submitted in standard format and contain certain basic information.

The Appendix to this notice contains a sample of the format that should be used and includes several clerical guidelines.

Each submitted proposal or comment on an FAA proposal should contain at least the following information:

(a) The full name or title of the proponent, or an appropriate acronym.

(b) The FAR section affected.

(c) The specific regulatory language proposed to attain the objective sought.

(d) The language of the rule or rules from which the proposal is made.

(e) An explanation and justification of the proposal, including answers to the following questions:

(1) What is the background?

(2) Why is the proposal necessary?

(3) What data, reports, records, etc., support the proposal?

(4) What is probable impact (if any) on the environment, energy consumption, safety, and the traveling public?

(5) Each FAA proposal and submitted proposal should be assessed for its economic impact. This assessment should include a comparison of the costs associated with Parts 23 and 25, the FAA proposal, and any submitted proposal. These costs should be identified by such categories as design, testing, prototype, production, operating, etc. Where appropriate, these costs should be further identified as initial (one-time), recurring, and revenue loss or gain.

When more than one proposal is submitted to attain the objective sought, the information in (f) above may be stated in one of the proposals and cross referenced in the others.

(Secs. 313(a), 601 and 603, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1423), Sec. 6(c)), Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on December 21, 1978.

LANGHORNE M. BOND,
Administrator.

APPENDIX—FORMAT FOR PROPOSALS

The following format below should be used in developing proposals, counter proposals and comments for consideration during the Light Transport Airplane Airworthiness Review Conference. In addition, each proposal should be submitted on a separate page. The text should be within margins not more than 6½ inches wide nor more than 9 inches long so that it can be printed on 8×10½ inch paper.

SAMPLE FORMAT

Proposal: (Leave Blank).
From: (Name or Organization).
Index: (Leave Blank).
FAR: § 24.23(b)(2).
Subject: Load Distribution Limits.
Current Rule: § 23.23, 25.23, (Part 135, Appendix A, if applicable—.

COMMENTS OR COUNTER PROPOSAL ON FAA PROPOSAL

Revise § 24.23(b)(2) to read as follows:

§ 24.23 Load distribution limits.

* * * * *

(b) * * *

(2) [Insert proposed language here]

* * * * *

Explanation and justification: [Explain why the proposed change is necessary and, where applicable, include the following information:

(1) What is the background?

(2) Why is the proposal necessary?

(3) What data, reports, records, etc., support the proposal?

(4) What is the probable impact of the environment, inflation, energy consumption and the traveling public?

(5) What is the economic impact affecting the manufacturers, the operators or both? Where possible, this should consider the initial cost of implementing the normal recurring cost and the anticipated revenue loss incurred.]

[FR Doc. 78-36066 Filed 12-27-78; 8:45 am]